

**AGREEMENT FOR PROJECT INSPECTOR SERVICES
FOR
WEST VALLEY COLLEGE; LANGUAGE ARTS AND SOCIAL SCIENCES RENOVATION,**

This Agreement for Project Inspector Services for WVC Language Arts and Social Sciences Renovation ("Agreement") is entered into this ____ day of _____, 2011 by and between **WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT** ("District") and **[INSPECTOR FIRM NAME AND ADDRESS]** ("Inspector Firm"). This Agreement is entered into with reference to the following Recitals, all of which are incorporated herein by this reference.

RECITALS

WHEREAS, the District anticipates construction of a work of improvement situated on the District's West Valley College campus and commonly referred to as the Language Arts And Social Sciences Renovation ("Project").

WHEREAS, the Project is a part of the District's Building Program, the District has retained Gilbane Building Co. ("Program Manager") to provide certain services relating to design and construction of Projects included within the District's Building Program.

WHEREAS, the District has retained Gilbane Building Co. ("CM") as Construction Manager to provide services relating to the design, bidding and/or construction of the Project.

WHEREAS, the District has retained HMC Architects ("the Architect") to provide design services in connection with the Project and to prepare Design Documents for the Project.

WHEREAS, in connection with construction of the Projects, the District desires to obtain certain consulting services, ("Project Inspector Services") as more particularly identified in this Agreement.

WHEREAS, Inspector Firm is duly qualified and capable of providing and performing the Project Inspector Services set forth herein; if any portion of the Project Inspector Services require, by applicable law, rule or regulation, that Inspector Firm or the personnel of the Inspector Firm providing such Project Inspector Services be licensed, certified or otherwise approved to provide the Project Inspector Services, the Inspector Firm and its personnel providing Project Inspector Services shall be properly licensed, certified or approved at all times while providing such Project Inspector Services.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the District and Inspector Firm agree as follows:

AGREEMENT

1 PROJECT INSPECTOR SERVICES

1.1 **General.** The Project Inspector Services set forth in this Agreement shall be completed by the Inspector Firm for the Project. The Inspector Firm will identify specific personnel who will be assigned Project Inspector Services along with a description of the Project Inspector Services to be performed or provided by the personnel identified by the Inspector Firm. Personnel identified by the Inspector Firm for portions of the Project Inspector Services for the Project shall be subject to the approval of the District and the Architect as well as other approvals/certificates required by applicable law, rule or regulation. The Inspector Firm shall

not modify or permit the modification of any portion of the Design Documents or the Construction Contract Documents for the Project. Except as set forth in this Agreement, the Inspector Firm shall provide all materials, tools and other items necessary to complete the Project Inspector Services and authorized Additional Project Inspector Services for the Project subject to this Agreement.

- 1.2 **Project Inspectors.** The Inspector Firm shall provide qualified Project Inspector(s) who are acceptable to the Architect for the Project and who can provide competent and adequate inspection services as defined by Building Standards Administrative Code (Part 1 Title 24, C.C.R) Article 5, 4-333 and Article 6, 4-343 (including amendments thereto) for the Project. The Project Inspector(s) are appointed by the District upon being satisfactory to the Architect and the Division of the State Architect (“DSA”).
- 1.2.1 Personal Knowledge. The Project Inspector(s) shall have personal knowledge obtained by conducting inspections of all parts of the Work of construction in all stages of its progress to assure that the Work as installed and constructed is in accordance with the DSA approved Construction Contract Documents, including DSA approved modifications thereto.
- 1.2.2 Architect. The Project Inspector(s) shall complete Project Inspector Services under the direction of the Architect for the Project. All inconsistencies or conflicts or errors in the Contract Documents shall be reported by the Project Inspector(s) to the Architect for the Project, in writing, for interpretation and instructions. In no case, however, shall the instructions of the Architect be construed to cause work to be done which is not in conformity with the DSA approved Construction Contract Documents and DSA approved modifications thereto.
- 1.2.3 Maintenance of Documents. The Project Inspector(s) shall keep a file of DSA approved Construction Contract Documents and DSA approved modifications thereto on the Site of the Project at all times including all reports of testing and inspection required by the Construction Contract Documents. The Project Inspector(s) shall have and maintain at the Site of the Project at all times all codes and regulations applicable to the Project and as necessary to perform Project Inspector Services under this Agreement. The Project Inspector(s) shall organize and maintain a complete system of records relating to construction of the Project including but not limited to: (i) daily job log; (ii) progress reports; (iii) correspondence file; (iv) change order file; (v) shop drawings and submittals file(s); (vi) test and inspection file; (vii) site conference file; and (viii) job memo file.
- 1.2.4 District Implemented Document Control Systems. The District has implemented EADOC for the electronic exchange of documents, data, information and other communications relating to Project construction. All parties engaged in any aspect of Project construction, including without limitation, the Project Inspectors shall be trained and shall use the District implemented EADOC system for Project communications. The Inspector Firm shall be assessed fees or charges for use of the EADOC system and the Contract Price due the Inspector Firm under this Agreement shall not be adjusted on account of the training of Project Inspectors to use the EADOC system or the use thereof.
- 1.2.5 Special Tests/Inspections. The Project Inspector(s) shall schedule and coordinate the performance and completion of all “special inspections” and “special tests” of materials, equipment or other items/products to be incorporated into the Project as required by the Construction Contract Documents and also maintain all necessary back-up information for processing invoices/billings related to special inspections or special tests of the Work. The Project Inspector(s) shall review the result of all special tests

and inspections to verify: (i) that the special test or inspection required by the Construction Contract Documents have been performed and completed; (ii) that the results of the special test or inspection are in compliance with standards established in the Construction Contract Documents; and (iii) the extent, if any, the portion of the Project subject to special tests or inspections fails to conform to requirements established in the Construction Contract Documents. If any portion of the Project subject to special tests or inspections shall not conform to requirements established in the Construction Contract Documents, the Project Inspector(s) shall: (i) assist the District, CM, Architect and others in the determination of corrective or remedial work to modify the work in place so that upon conduct of subsequent special tests or inspections such work will conform to requirements of the Construction Contract Documents; (ii) monitor's the Contractor's performance and completion of such corrective or remedial work; and (iii) if, in the reasonable determination of the Project Inspector(s), the Contractor is failing to timely and completely implement corrective or remedial measures, the Project Inspector(s) shall provide the District, CM and Architect with written recommendations of measures to be implemented to secure the Contractor's full and timely completion of such corrective or remedial measures.

- 1.2.6 DSA Notification. The Project Inspector(s) shall notify DSA: (i) at least forty-eight (48) hours prior to the start of construction; (ii) at least forty-eight (48) hours in advance of completion of foundation excavations; (iii) at least forty-eight (48) hours in advance of the first concrete pour; and (iv) when Work has been suspended for more than two (2) weeks.
- 1.2.7 Inspection Records. The Project Inspector(s) shall maintain complete and accurate records of all inspections required by Part I, Title 24, C.C.R.
- 1.2.8 Contractor Notification. The Project Inspector(s) shall notify the Contractor in writing of any deviations ("Deviation Notice") from the DSA approved Construction Contract Documents or DSA approved modifications thereto by the Contractor or its Subcontractors. Copies of such Deviation Notices shall be forwarded immediately by the Project Inspector(s) to the District, CM, Architect, and DSA. If any Deviation Notices are issued by the Project Inspector(s) during the course of construction of the Project, the Project Inspector(s) shall monitor the Contractor/Subcontractor(s) completion of necessary remedial, replacement or other corrective measures. When the Project Inspector(s) determine that the Contractor/Subcontractor(s) have completed necessary remedial, replacement or other corrective measures for any portion of the Project subject to a Deviation Notice, the Project Inspector(s) shall memorialize such determination in a written instrument distributed to the District, CM, Architect and DSA. If the Project Inspector(s) determine that the Contractor/Subcontractor(s) have not taken and completed necessary remedial, replacement or other corrective measures in connection with a Deviation Notice or have not taken or completed such measures within a reasonable time, the Project Inspector(s) shall notify the District, CM and Architect in writing of such determination, along with recommendations of measures to be implemented to ensure that the necessary remedial, replacement or other corrective measures to address a Deviation Notice are completed by the Contractor.
- 1.2.9 Project Inspector Reports. The Project Inspector(s) shall prepare and forward to the District, the CM, the Architect and DSA all reports of the Project Inspector(s) required by Part I, Title 24, C.C. R.
- 1.2.10 Inspection Requirements. The Project Inspector(s) shall advise the Contractor, Architect and the CM of needed inspections related to the then current status of the

Work, and the Contractor, CM or Architect shall provide the schedule of Work to the Project Inspector(s) to schedule and coordinate timely performance and completion of inspections.

1.2.11 Architect/District Observations. The Project Inspector(s) shall accompany the Architect or its consultants and the District when the District, Architect or the Architect's Consultants are observing Work in place or in progress.

1.2.12 Transmittal of Inquiries, etc. The Project Inspector(s) shall direct all questions, interpretations, suggestions, and criticisms to the Architect, its field representative, the CM or the District, as appropriate.

1.2.13 Progress Reports. The Project Inspector(s) shall assist the District in preparation of quarterly progress reports as necessary.

1.3 **Prohibited Actions/Activities**. Neither the Inspector Firm nor any of the Inspector Firm's Project Inspector(s) shall: (i) authorize or permit deviations from the DSA approved Construction Contract Documents or DSA approved modifications thereto; (ii) direct performance of any portion of the Work, including without limitation directing the Contractor(s)' construction means, methods techniques, sequences or procedures; or (iii) interfere with the Work of the Contractor(s) or the services of other Project participants, including without limitation, the Architect, the CM, the District or others.

1.4 **Additional Project Inspector Services**. Services not included in the Project Inspector Services are Additional Project Inspector Services. Without invalidating this Agreement, the District may make changes to the Project Inspector Services by adding, deleting or modifying the Project Inspector Services described herein by written notice to the Inspector Firm. If Additional Project Inspector Services are authorized by the District which do not result from the Inspector Firm's fault or neglect, the Inspector Firm will be compensated for authorized Additional Project Inspector Services in accordance with this Agreement.

1.5 **Inspector Firm Standard of Care**. The Project Inspector Services and authorized Additional Project Inspector Services; if any, shall be performed and provided by Inspector Firm: (i) using the Inspector Firm's best skill and attention; (ii) with due care and in accordance with applicable standards of professional care; and (iii) in accordance with applicable laws, rules and regulations. The Inspector Firm acknowledges that the Project Inspector Services are to be provided and performed in conjunction with other services provided by other parties relating to the Project, including without limitation, the Architect and the Contractor. Accordingly, Inspector Firm acknowledges and agrees that the Project Inspector Services will be provided as required by the progress of construction of the Project and that the Project Inspector Services will be provided and completed in a manner so as not to delay, hinder or interrupt the orderly and timely progression and completion of construction of the Project. The Inspector Firm is liable to the District for the consequences of its failure to provide, perform and/or complete the Project Inspector Services or authorized Additional Project Inspector Services in a manner not complementary with the Project activities of the Architect and Contractor or in an untimely manner.

1.6 **Inspector Firm as Independent Contractor; Limited Inspector Firm Agency**. In providing services under this Agreement, the Inspector Firm is an independent contractor to the District. The express terms of this Agreement set forth the limited extent to which the Inspector Firm is authorized to act as an agent or representative of the District. The Inspector Firm shall be liable to the District and third parties for the consequences of its conduct which exceed the express limited scope of the Inspector Firm to act on behalf of the District.

2 DISTRICT RESPONSIBILITIES

- 2.1 **Services and Facilities for Project Inspector(s).** The District will provide or cause to be provided for use by the Project Inspector(s) providing or performing Project Inspector Services at the Site: (i) temporary office space; (ii) furniture and furnishings; (iii) _____ (____) phones; (iv) plain paper fax machine; (v) telephone/fax/internet service; and (vi) plain paper copier with copy speed of at least thirty five (35) pages per minute.
- 2.2 **Project Information.** The District will provide the Inspector Firm with one (1) copy of the Construction Contract Documents for the Project. The Inspector Firm shall be solely responsible for costs, fees or expenses to reproduce additional sets of the Construction Contract Documents. The Inspector Firm shall, at its sole cost and expense, obtain all other codes, rules or regulations applicable to the Work of the Project.
- 3 **CONTRACT PRICE.**
- 3.1 **Contract Price for Project Inspector Services.** The Contract Price for the Inspector Firm's completion of the Inspection Services hereunder shall be a not to exceed amount of _____ Dollars (\$_____). Billings of the Inspector Firm for the Contract Price shall be based upon the time of the Project Inspector(s) incurred in completing Inspector Services, multiplied by the applicable hourly rate set forth in Exhibit A hereto. The Contract Price set forth herein shall not be subject to adjustment, except in the event that the District authorizes or directs the Inspector Firm to provide or perform Additional Inspector Services or if the Term of this Agreement expires prior to completion of Project construction, provided that the Inspector Firm has not caused or contributed to the failure of Project construction to be completed within the Term.
- 3.2 **Additional Project Inspector Services.** If the District authorizes Additional Project Inspector Services, the District's payment of such Additional Project Inspector Services shall be based upon a mutually agreed upon lump sum fixed price. If mutual agreement is not reached, authorized Additional Project Inspector Services will be compensated based upon the time reasonably necessary to complete the authorized Additional Project Inspector Services multiplied by the applicable personnel hourly rate set forth in Exhibit A to this Agreement.
- 3.3 **Reimbursable Expenses.** There are no Reimbursable Expenses except for those authorized in advance by the District. If any Reimbursable Expenses are authorized by the District, the Inspector Firm will be paid the direct actual costs (including credits for trade discounts) of the authorized Reimbursable Expense item without mark-up.
- 3.4 **Inspector Firm Billings for Payment of Contract Price.** During the course of providing Project Inspector Services for the Project, the Inspector Firm shall submit monthly billing invoices to the District for payment of the Contract Price for Project Inspector Services, authorized Additional Project Inspector Services and authorized Reimbursable Expenses performed or incurred in the immediately prior month. Inspector Firm's billings shall be in such form and format along with substantiating data, as may be reasonably requested by District.
- 3.5 **District Payment of Contract Price.** Within thirty (30) days of receipt of Inspector Firm's billing invoices, District will make payment to Inspector Firm of undisputed amounts of the Contract Price due for Project Inspector Services, authorized Additional Project Inspector Services and authorized Reimbursable Expenses for the Project. No deductions shall be made or withheld from payments due Inspector Firm hereunder on account of any penalty, assessment, liquidated damages or other amounts withheld by the District from payment to the Contractor or Architect engaged by the District for construction of the Project. The District may, however, withhold or deduct from amounts otherwise due Inspector Firm hereunder if Inspector Firm fails to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after

Inspector Firm has fully cured such failure of performance, less costs, damages or losses sustained by the District resulting therefrom.

- 3.6 **Inspector Firm's Payments.** The Inspector Firm shall promptly pay its employees, Sub-Inspector Firms, if any, and others performing or providing Project Inspector Services or authorized Additional Project Inspector Services upon receipt of payments of the Contract Price from the District. If required by applicable law, rule or regulation, the Inspector Firm's payments to personnel providing or performing Project Inspector Services or authorized Additional Project Inspector Services shall be at least the prevailing wage rate established for the type of service provided. If prevailing wage rates apply to any personnel performing or providing Project Inspector Services or authorized Additional Project Inspector Services for the Project, the obligation for compliance rests solely with the Inspector Firm without adjustment of the Contract Price due the Inspector Firm for the Project.

4 **INSURANCE; INDEMNITY**

- 4.1 **Inspector Firm Insurance.** At all times during performance of Project Inspector Services and authorized Additional Project Inspector Services, the Inspector Firm shall maintain policies of insurance in the minimum coverage amounts set forth herein.
- 4.2 **Workers' Compensation and Employers Liability Insurance.** The Workers' Compensation Insurance shall cover claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts may be liable. The Employer's Liability Insurance shall cover bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by Inspector Firm. The Employer's Liability Insurance may be obtained as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance policy. The minimum coverage amount of the Workers' Compensation Insurance policy shall be in accordance with applicable law. The minimum coverage amount of the Employers Liability Insurance policy shall be One Million Dollars (\$1,000,000).
- 4.3 **Commercial General Liability Insurance.** The Commercial General Liability and Property Insurance shall cover the types of claims set forth below which may arise out of or result from services under this Agreement and for which Inspector Firm may be legally responsible: (a) claims for damages because of bodily injury, occupational sickness or disease or death of their employees; (b) claims for damages because of bodily injury, sickness or disease or death of any person other than their employees; (c) claims for damages insured by usual personal injury liability coverage; (d) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (e) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; and (f) contractual liability insurance applicable to obligations under this Agreement. The District shall be an additional named insured to Inspector Firm's commercial general liability insurance policy. The minimum coverage amount of the Commercial General Liability insurance policy shall be One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate.
- 4.4 **Policy Endorsements; Evidence of Insurance.** The Inspector Firm shall deliver to the District Certificates of Insurance evidencing each of the policies of insurance in the coverage amounts required hereunder. All policies of insurance required hereunder shall be issued by insurer(s) admitted to issue insurance by the State of California and to the reasonable satisfaction of the District. Coverages under each policy of insurance required hereunder, whether by endorsement or otherwise, shall provide that such policy will not be modified, canceled or allowed to expire without at least thirty (30) days advance written notice to the District.

4.5 **District General Liability Insurance.** The District will maintain General Liability Insurance covering the District for claims of bodily injury or death of persons and property damage. The District may at its sole election obtain such liability insurance from a commercially available source, a Joint Powers Authority or by self-insurance.

4.6 **Indemnity.**

4.6.1 Inspector Firm Indemnity of District. To the fullest extent permitted by law, the Inspector Firm shall indemnify, defend and hold harmless the Indemnified Parties who are: the District and its employees, officers, Board of Trustees, Trustees, agents and representatives from any and all claims, demands, losses, responsibilities or liabilities for: (i) injury or death of Inspector Firm's employees, independent contractors or representatives arising out of this Agreement; (ii) injury or death of persons, damage to property; or (iii) other costs or charges arising out of or attributable, in whole or in part, to the negligent or willful acts, omissions, errors and/or other conduct of Inspector Firm, its Sub-Inspector Firms or the employees, agents and representatives of the Inspector Firm or any of its Sub-Inspector Firms in performing or providing any of the obligations, services or other work product contemplated under this Agreement. The foregoing shall include without limitation, attorneys fees and costs incurred by the Indemnified Parties and shall survive the completion of obligations under this Agreement or termination of this Agreement until any such claim, demand, loss, responsibility or liability covered by the provisions hereof is barred by the applicable Statute of Limitations.

4.6.2 District Indemnity of Inspector Firm. The District shall indemnify and hold harmless Inspector Firm from all claims arising out of bodily injury (including death) and physical damage which arise out of the negligent or willful acts, omissions or other conduct of the District.

5 **Term; Time.**

5.1 Term. This Agreement shall be effective upon the District and the Inspector Firm each executing a counterpart copy hereof, delivery of an executed counterpart copy hereof to the other and ratification of this Agreement by the District's Board of Trustees. The Term of this Agreement shall commence on the date established by the District in a written notice to proceed to the Inspector Firm which shall be a date after ratification of this Agreement by the District's Board of Trustees and prior to commencement of Project construction activities at the Site. This Agreement shall terminate _____ (____) calendar months after the commencement date established by the District's notice to proceed issued pursuant to the foregoing ("the Termination Date"). If Project construction is not completed as of the Termination Date through no fault or neglect of Inspector Firm or its Project Inspector(s), the Termination Date shall be extended and Inspector Services provided by the Inspector Firm after the Termination Date shall be based upon the hours of personnel time reasonably necessary to complete remaining Inspector Services, multiplied by the applicable hourly rate set forth in Exhibit A hereto. If Project construction is not completed by the Termination Date and delayed completion of Project construction is caused in whole or in part by: (a) the negligent acts, omissions or other conduct of the Inspector Firm or the Project Inspector(s) or (b) acts of God, the Termination Date shall be extended commensurate with the number of calendar days attributed to (a) and/or (b) above ("the Extended Duration"). During the Extended Duration, the Inspector Firm shall continue to provide or perform the Inspector Services without adjustment of the Contract Price.

5.2 Time. All of the Inspector Services and authorized Additional Inspector Services set forth in this Agreement for the Project shall be completed by the Inspector Firm in a prompt and

diligent manner as is consistent with professional skill and care. The Inspector Firm shall be liable to the District for all costs, losses, damages or other liabilities arising out of the failure of the Inspector Firm to complete Inspector Services for the Project in a timely manner, provided that the Inspector Firm's liabilities hereunder shall not extend to costs, losses, damages or other liabilities caused by factors beyond the reasonable control of the Inspector Firm.

6 TERMINATION; SUSPENSION

- 6.1 **Termination for Default.** Either the District or Inspector Firm may terminate this Agreement upon seven (7) days advance written notice to the other if there is a default by the other Party in its performance of a material obligation hereunder and such default in performance is not caused by the Party initiating the termination. Such termination shall be deemed effective the seventh (7th) day following the date of the written termination notice, unless during such seven (7) day period, the Party receiving the written termination notice shall commence to cure its default(s) and diligently thereafter prosecute such cure to completion. In addition to the District's right to terminate this Agreement pursuant to the foregoing, the District may terminate this Agreement upon written notice to Inspector Firm if: (i) Inspector Firm becomes bankrupt or insolvent, which shall include without limitation, a general assignment for the benefit of creditors or the filing by Inspector Firm or a third party of a petition to reorganize debts or for protection under any bankruptcy or similar law or if a trustee or receiver is appointed for Inspector Firm or any of Inspector Firm's property on account of Inspector Firm's insolvency; or (ii) if Inspector Firm disregards applicable laws, codes, ordinances, rules or regulations. If the District exercises the right of termination hereunder, the Contract Price due the Inspector Firm, if any, shall be based upon Project Inspector Services, authorized Additional Project Inspector Services and authorized Reimbursable Expenses incurred or provided prior the effective date of the District's termination of this Agreement, reduced by the District's prior payments of the Contract Price and losses, damages, or other costs sustained by the District arising out of the termination of this Agreement or the cause(s) for termination of this Agreement. Payment of the amount due the Inspector Firm, if any, shall be made by District only after completing construction of the Project. Inspector Firm shall remain responsible and liable to District all losses, damages or other costs sustained by District arising out of termination pursuant to the foregoing or otherwise arising out of Inspector Firm's default hereunder, to the extent that such losses, damages or other costs exceed any amount due Inspector Firm hereunder for Project Inspector Services, authorized Reimbursable Expenses or authorized Additional Project Inspector Services.
- 6.2 **District Right to Suspend.** The District may, in its discretion, suspend all or any part of the construction of the Project or the Inspector Firm's services hereunder; provided, however, that if the District shall suspend construction of the Project, and the Inspector Firm's services for the Project for a period of sixty (60) consecutive days or more and such suspension is not caused by the Inspector Firm's default or the acts or omissions of Inspector Firm or its Sub-Inspector Firms, upon rescission of such suspension, the Contract Price will be subject to adjustment to reflect actual costs and expenses incurred by Inspector Firm, if any, as a direct result of the suspension and resumption of design or construction or Inspector Firm's services hereunder.
- 6.3 **District Termination for District Convenience.** The District may, at any time, upon seven (7) days advance written notice to Inspector Firm terminate this Agreement for the District's convenience and without fault, neglect or default on the part of Inspector Firm. In such event, the Agreement shall be deemed terminated seven (7) days after the date of the District's written notice to Inspector Firm or such other time as the District and Inspector Firm may mutually agree upon. In such event, the District shall make payment of the Contract Price to

Inspector Firm for Project Inspector Services, authorized Additional Project Inspector Services or allowable Reimbursable Expenses provided or incurred through the date of termination. Except as set forth above, the Inspector Firm shall not be entitled to other compensation if the District exercises the right to terminate hereunder.

- 6.4 **Inspector Firm Suspension of Project Inspector Services.** If the District fails to make payment of undisputed portions of the Contract Price for the Project when due Inspector Firm hereunder, Inspector Firm may, upon seven (7) days advance written notice to the District, suspend further performance of services for the Project until payment in full of the undisputed portions of the Contract Price is received by Inspection Firm. In such event, Inspector Firm shall have no liability for any delays or additional costs for construction of the Project due to, or arising out of, such suspension.
- 6.5 **Inspector Firm Obligations Upon Termination.** Upon the District's exercise of the right of termination hereunder, the Inspector Firm shall take action as directed by the District relative to Project construction. If requested by the District, the Inspector Firm shall within five (5) days of such request, assemble and deliver to the District all work product, instruments of service and other items of a tangible nature (whether in the form of documents, drawings, samples or electronic files) prepared by or on behalf of the Inspector Firm under this Agreement. The Inspector Firm shall deliver the originals of all work product, Project records and other items of a tangible nature requested by the District pursuant to the preceding sentence; provided, however, that the Inspector Firm may, at its sole cost and expense, make reproductions of the originals delivered to the District.

7 MISCELLANEOUS

- 7.1 **Governing Law; Interpretation.** This Agreement shall be governed and interpreted in pursuant to the laws of the State of California and in accordance with its fair meaning and not strictly for or against the District or Inspector Firm. If any provision of this Agreement is deemed illegal, invalid unenforceable or void by any court of competent jurisdiction, such provision shall be deemed stricken and deleted herefrom, but all remaining provisions will remain and continue in full force and effect.
- 7.2 **Time.** Time is of the essence to this Agreement. The time for performance of any obligation hereunder by either Party shall be extended if performance of such obligation is delayed or prevented by conduct of the other Party, acts of God, or other unforeseeable events.
- 7.3 **Successors; Non-Assignability.** This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors of Inspector Firm and the District. Neither Inspector Firm nor District shall assign rights or obligations hereunder without the prior consent of the other, which consent may be withheld or granted in sole discretion of the Party requested to grant such consent.
- 7.4 **Project Records.** Records, documents and other materials generated or received by Inspector Firm in the course of performing services hereunder shall be delivered to the District within ten (10) days after completion of Project construction. Inspector Firm may, at its sole cost, make copies of such records for its own files.
- 7.5 **Notices.** Notices under this Agreement shall be addressed and delivered as set forth as follows.

If to District:
 Vice Chancellor, Administrative Services
 West Valley-Mission Community College District
 14000 Fruitvale Avenue

Saratoga, CA 95070-5698

With a copy to:
Director, Facilities
West Valley-Mission Community College District
14000 Fruitvale Avenue
Saratoga, CA 95070-5698

If to Inspector Firm:

7.6 **Cumulative Rights; No Waiver.** Duties and obligations imposed by this Agreement and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or failure to act by District shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default of the Inspector Firm.

7.7 **Definitions.**

- 7.7.1 Sub-Inspector Firms. Sub-Inspector Firms are persons or entities under contract with the Inspector Firm to provide a portion of the Project Inspector Services or authorized Additional Services. If required by applicable law, rule or regulation, Sub-Inspector Firms shall be properly licensed for the Project Inspector Services provided or performed by as Sub-Inspector Firm. The Inspector Firm is responsible for the adequacy, timeliness and quality of the services provided or performed by a Sub-Inspector Firm. The foregoing notwithstanding no portion of the Project Inspector Services or authorized Additional Project Inspector Services shall be performed or provided by a Sub-Inspector Firm to the Inspector Firm without the prior consent and approval of the District which may be withheld, limited or conditioned in the sole discretion of the District.
- 7.7.2 Architect. The Architect is the person or entity retained by the District to prepare Design Documents for the Project and to provide other services in connection with design, bidding and construction of the Project. The term Architect includes Design Consultants retained by the Architect.
- 7.7.3 Contractor. The Contractor is the person or entity under contract to the District to construct the Project or portions thereof. The term "Contractor" includes Subcontractors under contract to the Contractor and if the District awards more than one Construction Contract for construction of the Project or portions thereof, the term "Contractor" shall refer to all such Contractors.
- 7.7.4 Site. The physical area designated in the Design Documents for construction and related activities of the Project.
- 7.7.5 Design Documents. Drawings, specifications and other Instruments of Service prepared by or on behalf of the Architect for bidding and construction of the Project.
- 7.7.6 Construction Contract Documents. The documents issued by or on behalf of the District for bidding the Construction Contract and construction of the Project. The Construction Contract Documents include the Design Documents and include all modifications issued by or on behalf of the District.

7.7.7 CM. The CM is an independent contractor retained by the District to assist the District in connection with design, bidding and/or construction of the Project. The CM is authorized to act on behalf of the District in connection with the Project as set forth herein and in the Construction Contract Documents.

7.8 Disputes.

7.8.1 Inspector Firm Continuation of Services. Except in the event of the District's failure to make an undisputed payment of the Contract Price due the Inspector Firm, notwithstanding any disputes, disagreements or other matters in controversy between District and the Inspector Firm arising under this Agreement, the Inspector Firm shall continue to provide and perform Project Inspector Services for the Project.

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

7.8.3 Arbitration. All disagreements, disputes or other matters in controversy between Inspector Firm and District arising out of or pertaining to this Agreement, which are not fully resolved through the mandatory mediation set forth above shall be settled and resolved by binding arbitration conducted under the auspices of JAMS. The award rendered by the Arbitrator(s) ("Arbitration Award") shall be final and binding upon the District and the Inspector Firm only if the Arbitration Award is: (i) supported by law and substantial evidence pursuant to California Code of Civil Procedure §1296; and (ii) includes findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296. The District and the Inspector Firm hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§1286.4 and 1296, vacate the Arbitration Award if, after review of the Arbitration Award, the Court determines either that the Arbitration Award is not supported by substantial evidence or that it is based on an error of law. Any arbitration proceeding hereunder shall be conducted in the JAMS Regional Office closest to the administrative offices of the District.

7.8.4 Inspector Firm Compliance With Government Code §900 et seq. The arbitration proceedings set forth above are deemed proceedings subject to the Inspector Firm's full and strict compliance with all applicable requirements set forth in Government Code §900 relating to the filing of claims with the District and the District's rejection thereof prior to initiation of arbitration proceedings

7.9 **Entire Agreement**. The foregoing constitute the entire agreement and understanding between the District and Inspector Firm concerning the subject matter hereof, replacing and superseding all prior agreements or negotiations, whether written or verbal. No term or condition of this Agreement shall be modified or amended except by writing executed by the District and Inspector Firm. This Agreement and the documents enumerated below, if any, are all of the documents forming a part of the Agreement.

Exhibit A "Personnel Rates"

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

“DISTRICT”

**WEST VALLEY-MISSION COMMUNITY
COLLEGE DISTRICT**

“INSPECTOR FIRM”

[INSPECTOR FIRM NAME]

By: _____

Vice Chancellor, Administrative
Services

By: _____

Title _____