

**AGREEMENT FOR TEST AND INSPECTION SERVICES  
EXHIBIT B TO RFQ FOR TEST/INSPECTION SERVICES**

This Agreement for Test and Inspection Services ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2011 by and between West Valley-Mission Community College District ("District") and \_\_\_\_\_ (hereinafter "Consultant"). This Agreement is entered into with reference to the following Recitals, all of which are incorporated herein by this reference.

**RECITALS**

WHEREAS, the District is engaged in the design, bidding and construction of a work of improvement at the District's West Valley College Campus commonly described as the Language Arts/Social Sciences Renovation ("the Project")

WHEREAS, the Project is subject to the permitting, approval and oversight of the Division of State Architect ("DSA").

WHEREAS, certain materials/equipment/products to be incorporated into the Project are subject to special tests or inspections pursuant to DSA regulations, the terms of the Specifications for the Project and/or other requirements established for the Project.

WHEREAS, on or about October \_\_\_\_, 2011, the District issued a Request for Qualifications and Fee Proposals ("RFQ") seeking responses from firms providing special tests/inspection services which set forth their respective qualifications and proposals for completing the special test/inspection services for the Project; by this reference, the RFQ is incorporated herein.

WHEREAS, the Consultant submitted a response to the RFQ ("RFQ Response") on or about \_\_\_\_\_, 2011 by this reference, the RFQ Response is incorporated herein.

WHEREAS, in connection with construction of the Project, the District desires to obtain certain consulting services consisting generally of special tests/inspections of materials/equipment/products incorporated or to be incorporated into the Project ("T&I Services") which are more particularly identified and described in this Agreement.

WHEREAS, the Consultant and its personnel conducting the T&I Services subject to this Agreement are duly qualified and capable of providing and performing the T&I Services; if any portion of the T&I Services require, by applicable law, rule or regulation, that Consultant be licensed, certified or otherwise approved to provide the T&I Services, Consultant and/or its personnel completing such T&I Services are and will be properly licensed, certified or approved at all times while providing such T&I Services.

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

**AGREEMENT**

**1 T&I SERVICES**

**1.1 General.**

**1.1.1 Consultant Personnel.** If requested by the District for the Project, the Consultant will identify specific personnel along with a description of the T&I Services to be performed or provided in connection with the Project by

personnel identified by the Consultant. Personnel identified by the Consultant for portions of the T&I Services for an Assigned Project shall be subject to the District’s approval and other approvals, certifications and similar authorizations required by applicable law, rule or regulation, including without limitation those promulgated by DSA.

- 1.1.2 No Consultant Modifications. The Consultant shall not modify or permit the modification of any portions of the Design Documents or the Construction Contract Documents for the Project.
- 1.1.3 Consultant’s Responsibilities. Except as set forth in this Agreement, the Consultant shall provide all materials, equipment, services, tools and other items necessary to complete the T&I Services and authorized Additional T&I Services for the Project.

1.2 Project Tests/Inspections. The T&I Services to be completed by the Consultant under this Agreement are described below.

<b>Earthwork - Nuclear Density Testing During Earthwork Operations</b>
Building Pad Preparation
Utility Trench Backfill
Driveway Areas
Sub-Grade Preparation
Aggregate Base
Geotechnical Engineer
Laboratory Tests
Compaction Curve
Pad Certification
Engineering Review/Report
<b>Reinforced Concrete – Observation and Test Samples During Concrete Placement</b>
Reinforcing Steel Placement Inspections
Sample/Tagging of Reinforcing Steel
Concrete Placement
Foundations/Footings
Slab on Grade
Slab on Deck
Walls/Columns
Miscellaneous Pours
Batch Plant Operations Observations
Adhesive and Expansion Anchors
Laboratory Tests
Sample Pick-Up
Concrete Cylinder Compression Tests (30 sets of 3 each)
Mix Design Review
Tensile and Bend
Grab Sample

<b>Structural Masonry – Observation and Sampling During Masonry Placement</b>
Masonry Placement
Laboratory Tests
Sample Pick-Up
Compression Testing - Pre-Construction Prisms (1 set of 5)
Compression Testing – Production Prisms (3 sets of 3)
Compression Testing – Grout (7 sets of 3)
Compression Testing – Mortar (7 sets of 3)
<b>Structural Steel - Non-Destructive Testing During Structural Steel Operations</b>
Shop Welding Observations
Ultrasonic Inspection – Shop
Field Welding Observations
Ultrasonic Inspection – Field
High Strength Bolting
Metal Decking
Spray Applied Fireproofing
Laboratory Tests
Fireproof Density/Thickness

- 1.3 Scheduling of T&I Services. The Consultant acknowledges that the specific times at which T&I Services are required is subject to the progress of construction of the Project and the readiness of materials/equipment/products for tests/inspections. The Consultant further acknowledges that the completion of T&I Services, as scheduled, is critical to maintaining progress of construction of the Project. Accordingly, the Consultant agrees that so long as the Consultant is provided with at least forty eight (48) hours advance written or verbal notice from the District, Architect, Project Inspector or Project Manager of the readiness of a portion of the Work of the Project for a test/inspection, the Consultant shall have its personnel and all other necessary materials or equipment to conduct and complete the required test/inspection at the scheduled date/time. The Consultant acknowledges and agrees that its failure to timely provide T&I Services to complete tests/inspections, as scheduled, has the potential of delaying the progress of construction of the Project and increasing the costs to complete construction of the Project. The Consultant agrees that if it fails to timely conduct and complete tests/inspections, when scheduled for the Project, it shall be liable to the District for all losses, damages, costs, expenses or charges arising out of, or related in any manner, to the Consultant’s failure to timely conduct and complete T&I Services as scheduled.
- 1.4 Re-Test/Re-Inspection. If upon completing the initial test/inspection of a portion of the Project, the Consultant determines that materials/equipment/products subject to such test/inspection do not meet the minimum or required standards established therefor and additional subsequent re-test/re-inspection of such portion of the Project is

required, the Consultant shall submit to the Architect, Project Inspector and Project Manager a report setting forth: (i) a detailed description of the specific test/inspection requirements which were not met by the materials/equipment/products tested/inspected by the Consultant; and (ii) a general description of the measures to be implemented prior to re-test/re-inspect of such materials/equipment/products. The Consultant acknowledges that the terms of the Construction Contract provide for the District's payment of the costs, fees and expenses incurred in connection with the initial test/inspection of materials/equipment/products; if the results of the initial test/inspection of materials/equipment/products do not comply with required standards and subsequent re-test/re-inspection is necessary to establish compliance with such standards, the Consultant shall maintain detailed records and detailed substantiating data relating to the fees, costs or expenses incurred to complete such re-test/re-inspection so that the District can backcharge the Contractor for such fees, costs or expenses.

1.5 Test/Inspection Reports. The Consultant shall promptly prepare written and/or graphic reports of the test/inspection conducted and the results of such test/inspection, including without limitation a description of each test/inspection, the scope and nature of the materials, equipment or other products subject to each such test/inspection and conclusions reached by the Consultant relating to the conformity of the materials, equipment or other products tested/inspected with required standards. When the Consultant concludes that the materials, equipment or other products tested/inspected are not in compliance with applicable standards, the Consultant shall set forth necessary remedial, corrective or other measures to be taken with such materials, equipment or other products and the nature/scope of the re-test/re-inspection of such materials, equipment or other products. The originals of all such test/inspection reports shall be delivered by the Consultant to the Architect for the Project and copies of all such test/inspection reports shall be delivered by the Consultant to the Project Inspector and Project Manager within five (5) days of the date of the completion of each such test/inspection. The Consultant acknowledges and agrees that progress of construction of the Project is subject to test/inspection confirmation that materials, equipment or other products incorporated into the Project are in compliance with required standards. The Consultant agrees that it shall be liable to the District for all consequences of its failure to commence, complete and submit reports of tests/inspections in accordance with the terms of this Agreement.

1.6 Additional T&I Services. Services not included in the T&I Services described in this Agreement are Additional T&I Services. Without invalidating this Agreement, the District may make changes to the T&I Services for the Project by adding, deleting or modifying the T&I Services set forth in the PTIAA for the Assigned Project by written notice to the Consultant. If Additional T&I Services for the Project are authorized by the District and which are not the result of the Consultant's fault or neglect, the Consultant will be compensated for authorized Additional T&I Services in accordance with this Agreement. The foregoing notwithstanding, if any Additional T&I Services for the Project are required due to the fault or neglect of the Consultant in completing the T&I Services for the Project, the Consultant shall complete all such Additional T&I Services without additional cost to the District or additional compensation to the Consultant, provided that the Consultant shall remain liable for all other costs, fees, expenses, charges, losses or liabilities arising out of such fault or neglect.

- 1.7 Consultant Standard of Care. The T&I Services and authorized Additional T&I Services; if any, shall be performed and provided by Consultant: (i) using the Consultant'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 Consultant acknowledges that T&I Services under this Agreement are to be provided and performed in conjunction with other services provided by other parties relating to the Project, including without limitation, the Architect, the Project Inspector and the Contractor. Accordingly, Consultant acknowledges and agrees that all T&I Services under this Agreement shall be provided and completed as required by the progress of Project construction and that the T&I 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 Project construction. The Consultant is liable to the District for the consequences of its failure to provide, perform T&I Services or authorized Additional T&I Services necessary to complete a test/inspection, as scheduled.
- 1.8 Consultant as Independent Contractor; Limited Consultant Agency. In providing services under this Agreement, the Consultant is an independent contractor to the District. The express terms of this Agreement set forth the limited extent to which the Consultant is authorized to act as an agent or representative of the District. The Consultant shall be liable to the District and third parties for the consequences of its conduct which exceed the express limited scope of the Consultant's authority to act on behalf of the District.

## 2 **CONTRACT PRICE.**

- 2.1 Contract Price for T&I Services. The Contract Price for the T&I Services under this Agreement shall be the lump sum, fixed price of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), which is allocated to each specific test/inspection as set forth in Attachment A hereto (the Contract Price Breakdown). The Test/Inspection Contract Price represent the full amount due from the District to the Consultant for the T&I Services, including the Consultant's fee, personnel expenses (including all benefits and burdens), travel for the Consultant, its employees and others providing any part of the T&I Services to and from their respective offices/homes and the Site and the District's Administrative Offices, travel within the **Counties of Santa Clara, San Benito, San Mateo, San Francisco, Alameda and Contra Costa**, profit and administrative and overhead costs (including without limitation insurance) arising out of or associated with this Agreement.
- 2.2 Additional T&I Services. If the District authorizes Additional T&I Services, the District's payment of such Additional T&I Services shall be based upon a mutually agreed upon lump sum fixed price. If mutual agreement regarding the lump sum fixed price for Additional T&I Services is not reached, authorized Additional T&I Services will be compensated based upon the time reasonably necessary to complete the authorized Additional T&I Services multiplied by the applicable personnel hourly rate and/or test/inspection charges set forth in Exhibit A to this Agreement.
- 2.3 Reimbursable Expenses. Except for tests/inspections conducted at a location situated one hundred (100) miles or more from the Site, there are no Reimbursable Expenses due the Consultant from the District for completion of the T&I Services under this Agreement. If the Consultant is required to conduct a test/inspection at a location more than one hundred (100) miles from the Site, allowable Reimbursable Expenses shall be

limited to the following: (i) mileage for automobile travel at \_\_\_\_ cents (\_\_\_\_¢) per mile to and from the location of such test/inspection; (ii) if required, round trip coach class airfare from Mineta San Jose International Airport to the location of such test/inspection; (iii) if required, economy class car rental; (iv) if required, hotel room at a not to exceed daily rate of \_\_\_\_\_ Dollars (\$\_\_\_\_\_); and (v) if required, not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per day for meals.

- 2.4 Overtime, Weekend, Holiday Charges. If through no fault or neglect of the Consultant, any test/inspection is conducted outside the hours of 7:00 A.M. and 6:00 P.M., on a weekend day or on a District-recognized holiday day, the additional charges for such test/inspection conducted during such hours or days shall be subject to additional compensation to the Consultant as follows: \_\_\_\_\_. If any test/inspection is conducted outside the hours of 7:00 A.M. and 6:00 P.M., on a weekend day or on a District-recognized holiday day as a result of any fault or neglect of the Consultant, no additional compensation shall be due the Consultant for such tests/inspections and the Consultant shall remain liable to the District for costs, expenses, losses or other liabilities arising out of such fault or neglect of the Consultant.
- 2.5 Consultant Billings for Payment of Contract Price. During the course of providing T&I Services, Consultant shall submit monthly billing invoices to the District for payment of the Contract Price for T&I Services, authorized Additional T&I Services and allowable Reimbursable Expenses performed or incurred in the immediately prior month for the Project. The Consultant's billings shall be in accordance with Attachment C heretofore and in such form, format and supported by such substantiating data as may be reasonably requested by District.
- 2.6 District Payment of Contract Price. Within thirty (30) days of receipt of Consultant's billing invoices, District will make payment to Consultant of undisputed amounts of the Contract Price due for T&I Services, authorized Additional T&I Services and allowable Reimbursable Expenses for the Project. No deductions shall be made or withheld from payments due Consultant hereunder on account of any penalty, assessment, liquidated damages or other amounts withheld by the District from payment to the Contractor or Architect in connection with the Project. The District may, however, withhold or deduct from amounts otherwise due Consultant hereunder if Consultant 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 Consultant has fully cured such failure of performance, less costs, damages or losses sustained by the District resulting therefrom.
- 2.7 Consultant's Payments. The Consultant shall promptly pay its employees, Sub-Consultants, if any, and others performing or providing T&I Services or authorized Additional T&I Services upon receipt of payments of the Contract Price from the District. If required by applicable law, rule or regulation, the Consultant's payment to personnel providing or performing T&I Services or authorized Additional T&I Services shall be at least the prevailing wage rate established for the type of service provided by such personnel. If prevailing wage rates apply to any personnel performing or providing T&I Services or authorized Additional Services, the obligation for compliance rests solely with the Consultant without adjustment of the Contract Price for T&I Services for the Project.

**3 INSURANCE; INDEMNITY**

- 3.1 Consultant Insurance. At all times during performance of T&I Services and authorized Additional T&I Services under this Agreement, the Consultant shall maintain policies of insurance in the minimum coverage amounts set forth in this Agreement.
- 3.2 Workers Compensation and Employer's Liability Insurance. The Consultant shall obtain and maintain Workers' Compensation Insurance covering claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts. The Consultant shall obtain and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by Consultant. 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 under the Consultant's Workers Compensation Insurance policy shall be in accordance with applicable legal requirements. The minimum coverage amount under the Consultant's Employer's Liability Insurance policy shall be One Million Dollars (\$1,000,000). The foregoing requirements do not apply to if the Consultant is a sole-proprietorship which has no employees. In such event, the Consultant's obligation to obtain and maintain Workers Compensation Insurance and Employer's Liability Insurance required by the foregoing shall be waived only if the Consultant provides the District with a written certification, executed under penalty of perjury under California law, setting forth the following: (i) that the Consultant is a sole proprietor form of business; (ii) that the Consultant has no employees; and (iii) if at any time during the Term of this Agreement the Consultant retains employees, the Consultant will strictly comply with the requirements relating to Workers Compensation Insurance and Employers Liability Insurance.
- 3.3 Commercial General Liability Insurance. The Consultant shall obtain and maintain Commercial General Liability and Property Insurance covering the types of claims set forth below which may arise out of or result from services under this Agreement and for which Consultant may be legally responsible: (i) claims for damages because of bodily injury, occupational sickness or disease or death of their employees; (ii) claims for damages because of bodily injury, sickness or disease or death of any person other than their employees; (iii) 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 Consultant's commercial general liability insurance policy. The minimum coverage amount under the Consultant's 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.
- 3.4 Policy Endorsements; Evidence of Insurance. Consultant shall deliver to the District Certificates of Insurance evidencing each of the policies of insurance in the minimum coverage amounts required pursuant to the foregoing concurrently with its execution of this Agreement. 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, 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.

3.5 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.

3.6 Indemnity.

3.6.1 Consultant Indemnity of District. To the fullest extent permitted by law, the Consultant shall indemnify, defend and hold harmless the District and its employees, officers, Trustees, agents and representatives (collectively, "the Indemnified Parties") from any and all claims, demands, losses, responsibilities or liabilities for: (i) injury or death of Consultant's employees 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 wilful acts, omissions, errors and/or other conduct negligent of Consultant, its Sub-Consultants or the employees, agents and representatives of Consultant or any of its Sub-Consultants 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 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.

3.6.2 District Indemnity of Consultant. The District shall indemnify and hold harmless Consultant 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.

4 **TERM.** The Term of this Agreement shall commence on the date of the District's Board of Trustees ratification of this Agreement and shall terminate upon the Consultant's completion of the T&I Services subject to this Agreement.

5 **TERMINATION; SUSPENSION**

5.1 Termination for Default. Either the District or Consultant 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 it default(s) and diligently thereafter prosecute such cure to completion. In addition to the District's right to terminate this Agreement pursuant to the foregoing, the District may terminate this Agreement upon written notice to Consultant if: (i) Consultant becomes bankrupt or insolvent, which shall include without limitation, a general assignment for the benefit of creditors or the filing by Consultant 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 Consultant or any of Consultant's property on account of Consultant's insolvency; or (ii) if Consultant disregards applicable laws, codes, ordinances, rules or regulations. If the District exercises the right of termination hereunder, the Contract Price due the Consultant, if any, shall be based upon T&I Services, authorized Additional T&I



Services and 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 Consultant, if any, shall be made by District only after completion of construction of the Project. Consultant 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 Consultant's default hereunder, to the extent that such losses, damages or other costs exceed any amount due Consultant hereunder for T&I Services, Reimbursable Expenses or authorized Additional T&I Services for the Project.

- 5.2 District Right to Suspend. The District may, in its discretion, suspend all or any part of the construction of the Project or the T&I Services hereunder; provided, however, that if the District shall suspend construction of the Project or T&I Services hereunder for a period of sixty (60) consecutive days or more and such suspension is not caused by the Consultant's default or the acts or omissions of Consultant or its Sub-Consultants, upon rescission of such suspension, the Contract Price will be subject to adjustment to reflect actual costs and expenses incurred by Consultant, if any, as a direct result of the suspension and resumption of construction of the Project.
- 5.3 District Termination For District Convenience. The District may, at any time, upon seven (7) days advance written notice to Consultant terminate this Agreement or the T&I Services, in whole or in part, for the District's convenience, without fault, neglect or default on the part of Consultant. In such event, the Agreement shall be deemed terminated seven (7) days after the date of the District's written notice to Consultant or such other time as the District and Consultant may mutually agree upon. In such event, the District shall make payment of the Contract Price to Consultant for T&I Services for the Project, authorized Additional T&I Services or allowable Reimbursable Expenses provided or incurred through the date of termination. Except as set forth above, the Consultant shall not be entitled to other compensation if the District exercises the right to terminate hereunder.
- 5.4 Consultant Suspension of T&I Services. If the District shall fail to make undisputed payment of the Contract Price when due Consultant hereunder, Consultant may, upon seven (7) days advance written notice to the District, suspend further performance T&I Services for the Project until payment in full is received. In such event, Consultant shall have no liability for any delays or additional costs to complete construction of the Project due to, or arising out of, such suspension.
- 5.5 Consultant Obligations Upon Termination. Upon the District's exercise of the right of termination hereunder, the Consultant shall take action as directed by the District relative to on-going construction of the Project at the time of termination. If requested by the District, the Consultant 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 Consultant under this Agreement. The Consultant shall deliver the originals of all work product, records relating to the Project and other items of a tangible nature requested by the District pursuant to the preceding sentence; provided, however, that the Consultant may, at its sole cost and expense, make reproductions of the originals delivered to the District.

6 MISCELLEANOUS

6.1 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 Consultant. 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 of this Agreement will remain and continue in full force and effect.

6.2 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.

6.3 Successors; Non-Assignability. This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors of Consultant and the District. Neither Consultant 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.

6.4 Project Records. Records, documents and other materials generated or received by Consultant in the course of performing T&I Services for the Project shall be delivered to the District. Consultant may, at its sole cost, make copies of such records for its own files.

6.5 Notices. Notices under this Agreement to the District or the Consultant shall be addressed and delivered as follows:

If to District:

Director, General Services  
West Valley-Mission Community College District  
14000 Fruitvale Avenue  
Saratoga, California 95070

and

Vice Chancellor, Administrative Services  
West Valley-Mission Community College District  
14000 Fruitvale Avenue  
Saratoga, California 95070

If to Consultant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6.6 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 Consultant.

6.7 **Definitions.**

- 6.7.1 **Sub-Consultants.** Sub-Consultants are persons or entities under contract with the Consultant to provide a portion of the T&I Services or authorized Additional Services. If required by applicable law, rule or regulation, Sub-Consultants shall be properly licensed, certified or otherwise approved for the T&I Services provided or performed by as Sub-Consultant. The Consultant is responsible for the adequacy, timeliness and quality of the T&I Services provided or performed by a Sub-Consultant. The foregoing notwithstanding no portion of the T&I Services or authorized Additional T&I Services shall be performed or provided by a Sub-Consultant to the Consultant without the prior consent and approval of the District which may be withheld, limited or conditioned in the sole discretion of the District.
- 6.7.2 **Architect.** The Architect is the person or entity retained by the District to prepare Design Documents for an Assigned Project and to provide other services in connection with design, bidding and construction of an Assigned Project. The term "Architect" includes Design Consultants retained by the Architect. The Architect for the Project is Lionakis.
- 6.7.3 **Contractor.** The Contractor is the person or entity under contract to the District to construct the Project. 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, the term Contractor shall refer to all such Contractors.
- 6.7.4 **Site.** The physical area designated in the Design Documents for construction and related activities of the Project.
- 6.7.5 **Design Documents.** Drawings, specifications and other Instruments of Service prepared by or on behalf of the Architect for bidding and construction of the Project, including modifications and changes thereto duly authorized by the District.
- 6.7.6 **Project Manager.** The Project Manager is an independent contractor retained by the District to assist the District in connection with design, bidding and construction of the Project. The Project Manager is authorized to act on behalf of the District in connection with the Project as set forth herein and in the Construction Contract Documents. The Project Manager for the Project is Gilbane Building Company.
- 6.7.7 **DSA.** DSA is the California Division of State Architect. References to DSA shall include, without limitation and as necessary by the context of usage, California Code of Regulations relating to DSA authority and responsibilities, DSA interpretive regulations and employees, agents or representatives of DSA.

6.8 **Disputes.**

- 6.8.1 **Consultant Continuation of Services.** Except in the event of the District's failure to make undisputed payments of the Contract Price due Consultant hereunder, notwithstanding any disputes or disagreements between District and Consultant hereunder, Consultant shall continue to provide and perform T&I Services and authorized Additional Services pending a subsequent resolution of such disputes.
- 6.8.2 **Mandatory Mediation.** All claims, disputes and other matters in controversy between the Consultant 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 Judicial Arbitration and Mediation Services ("JAMS"). The commencement and completion of mediation proceedings

pursuant to the foregoing is a condition precedent to either the District or the Consultant commencing arbitration proceedings pursuant to the following Paragraph.

6.8.3 Arbitration. All claims, disputes or other matters in controversy between Consultant and District arising out of or pertaining to the Project or this Agreement which are not fully resolved through the mandatory mediation set forth above shall be settled and resolved by binding arbitration conducted under the auspices of JAMS. The award rendered by the Arbitrator(s) ("Arbitration Award") shall be final, binding and enforceable only if the Arbitration Award: (i) is in writing; (ii) is supported by law and substantial evidence pursuant to Code of Civil Procedure §1296; and (iii) includes findings of fact and conclusions of law in conformity with Code of Civil Procedure §1296. If any claim or dispute is asserted by the Consultant, the Project Manager if any, the Contractor, Architect or the District relating to an Assigned Project and arising in whole or in part out of this Agreement or the services provided by or through the Consultant hereunder, Consultant and District agree that any arbitration proceedings initiated between Consultant and District hereunder shall be consolidated with any arbitration proceedings initiated in connection with such other claim or dispute. Any arbitration hereunder shall be conducted in the JAMS Regional Office closest to the Site. The Consultant and District shall each be solely responsible for fees, costs or expenses incurred in connection with any arbitration proceeding hereunder.

6.8.4 Consultant Compliance With Government Code §900 Et Seq. If the binding arbitration proceedings described above are commenced by the Consultant the substantive basis for such arbitration proceedings shall be deemed claims for money or damages pursuant to Government Code §905. The Consultant shall fully and timely comply with all applicable requirements set forth in Government Code §900 et seq. as an express condition precedent to the Consultant's initiation of arbitration proceedings.

6.9 **Entire Agreement.** The foregoing constitute the entire agreement and understanding between the District and Consultant 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 Consultant. This Agreement and the documents enumerated below, if any, are all of the documents forming a part of the Agreement.

- Exhibit A Contract Price Breakdown
- RFQ Response

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

**DISTRICT**  
**WEST VALLEY-MISSION COMMUNITY**  
**COLLEGE DISTRICT**

**CONSULTANT**  
**[Name]**

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

By: \_\_\_\_\_  
\_\_\_\_\_  
(Name and title typed or printed)  
Title: \_\_\_\_\_

## CONTRACT PRICE BREAKDOWN

Test/Inspection	Site Visits	Test/Inspection Charge
<b>Earthwork - Nuclear Density Testing During Earthwork Operations</b>		
Building Pad Preparation		\$ _____
Utility Trench Backfill		\$ _____
Driveway Areas		
Sub-Grade Preparation		\$ _____
Aggregate Base		\$ _____
Geotechnical Engineer		\$ _____
Laboratory Tests		\$ _____
Compaction Curve		\$ _____
Pad Certification		\$ _____
Engineering Review/Report		\$ _____
<b>Reinforced Concrete – Observation and Test Samples During Concrete Placement</b>		
Reinforcing Steel Placement Inspections		\$ _____
Sample/Tagging of Reinforcing Steel		\$ _____
<b>Concrete Placement</b>		
Foundations/Footings		\$ _____
Slab on Grade		\$ _____
Slab on Deck		\$ _____
Walls/Columns		\$ _____
Miscellaneous Pours		\$ _____

Batch Plant Operations Observations		\$ _____
Adhesive and Expansion Anchors		\$ _____
<b>Laboratory Tests</b>		
Sample Pick-Up		\$ _____
<b>Concrete Cylinder Compression Tests (30 sets of 3 each)</b>		
Mix Design Review		\$ _____
Tensile and Bend		\$ _____
Grab Sample		\$ _____
<b>Structural Masonry – Observation and Sampling During Masonry Placement</b>		
Masonry Placement		\$ _____
<b>Laboratory Tests</b>		
Sample Pick-Up		\$ _____ \$ _____
Compression Testing - Pre-Construction Prisms (1 set of 5)		\$ _____
Compression Testing – Production Prisms (3 sets of 3)		\$ _____
Compression Testing – Grout (7 sets of 3)		\$ _____
Compression Testing – Mortar (7 sets of 3)		\$ _____
<b>Structural Steel - Non-Destructive Testing During Structural Steel Operations</b>		
Shop Welding Observations		\$ _____
Ultrasonic Inspection – Shop		\$ _____
Field Welding Observations		\$ _____
Ultrasonic Inspection – Field		

		\$ _____
High Strength Bolting		\$ _____
Metal Decking		\$ _____
Spray Applied Fireproofing		\$ _____
Laboratory Tests		\$ _____
Fireproof Density/Thickness		\$ _____

**Mileage Charges.** If a test/inspection is conducted at a location situated \_\_\_\_\_ miles or more from the District's administrative offices, a mileage charge of \_\_\_ cents per mile will be charged on the basis of a \_\_\_ one-way trip \_\_\_ two-way trip.

**Per Diem Charges.** Per diem charges for meals and overnight stays will occur when a test/inspection is conducted at a location situated more than \_\_\_\_\_ miles from the District's administrative office; the maximum per diem meal charge is \_\_\_\_\_ dollars and the maximum hotel charge is \_\_\_\_\_ dollars. If per diem charges will be billed to the District and not based on the location of a test/inspection, provide a detailed description of all circumstances under which per diem charges will be billed to the District.