

COAST COMMUNITY COLLEGE DISTRICT
CONSTRUCTION MANAGEMENT AGREEMENT

This CONSTRUCTION MANAGEMENT AGREEMENT (“AGREEMENT”) is made in the County of Orange, State of California, and entered into on the dates indicated below, between the Owner, COAST COMMUNITY COLLEGE DISTRICT, a public educational agency, hereinafter referred to as “DISTRICT,” and _____, hereinafter referred to as “CONSTRUCTION MANAGER.” DISTRICT and CONSTRUCTION MANAGER are referred to herein as “PARTY” or collectively as PARTIES.”

WHEREAS, DISTRICT desires to retain CONSTRUCTION MANAGER to provide construction management services related to the implementation of _____, (“PROJECT”); and

WHEREAS, CONSTRUCTION MANAGER represents to DISTRICT that CONSTRUCTION MANAGER has the requisite and necessary experience, expertise, and ability in managing projects similar to the PROJECT, and will prepare and implement the successful delivery of the PROJECT.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I– DEFINITIONS

1. “CONSULTANT” includes an architect, engineer, planner, landscape architect, inspector, and legal or other professional/advisor with whom DISTRICT contracts to perform other services on the PROJECT.
2. “CONTRACTOR” means an individual or firm performing licensed contractor work on the PROJECT.
3. The term “STAFFING PLAN” shall mean CONSTRUCTION MANAGER’s best estimate for the PROJECT’s manpower requirements and corresponding fee as projected for each period (monthly, quarterly, annually).
4. “RESPONSIBILITY MATRIX,” EXHIBIT D, delineates responsibility by responsible party, i.e., DISTRICT, CONSTRUCTION MANAGER, CONTRACTOR, CONSULTANT. It defines “R” indicating who (which Party) is responsible for completion of the task or activity, and “I” indicating whose involvement is required to complete the task; and “S” indicating whose support is desired or requested, or whose cooperation is needed to complete a task.

**ARTICLE II- CONSTRUCTION MANAGER'S SERVICES
AND RESPONSIBILITIES**

1. By this AGREEMENT, CONSTRUCTION MANAGER accepts the relationship of trust and confidence established between CONSTRUCTION MANAGER and DISTRICT. CONSTRUCTION MANAGER covenants with DISTRICT to furnish its professional skill and judgment in accordance with the standards of its profession and under California law applicable to those specializing in providing services for projects of the type, scope and complexity of the PROJECT in performing all services under this AGREEMENT. CONSTRUCTION MANAGER shall furnish efficient business administration and supervision, and use its best professional efforts to complete the PROJECT in an expeditious and economical manner consistent with the interests and goals of DISTRICT.

2. This AGREEMENT, once signed by CONSTRUCTION MANAGER and approved by DISTRICT, is restricted to only the PROJECT.

3. CONSTRUCTION MANAGER shall be a representative of and shall advise and consult with DISTRICT on a regular basis during construction. CONSTRUCTION MANAGER shall have authority to act on behalf of DISTRICT only to the extent provided in this AGREEMENT unless otherwise authorized in writing by DISTRICT.

4. CONSTRUCTION MANAGER shall submit for DISTRICT's approval a schedule for performance of CONSTRUCTION MANAGER's services which may be adjusted with DISTRICT written approval as the PROJECT proceeds and which shall include allowances for a period of time required for DISTRICT's review and for approvals required by authorities having jurisdiction over the PROJECT. The time limits established by this schedule and approved in writing by DISTRICT shall not be exceeded by CONSTRUCTION MANAGER, except for reasonable cause as approved in writing by DISTRICT.

5. The initial services of CONSTRUCTION MANAGER include identifying and coordinating administrative activities, notifying DISTRICT of all matters in conjunction with the PROJECT, and managing specific aspects of the PROJECT from its conception to its completion. The initial services consist of the components described in EXHIBIT A – SCOPE OF SERVICES.

6. CONSTRUCTION MANAGER shall assist DISTRICT in organizing and coordinating the work of DISTRICT, CONSULTANT(s), and CONTRACTOR personnel assigned to the PROJECT. CONSTRUCTION MANAGER will clarify the roles and responsibilities of each of CONSTRUCTION MANAGER's team members as they pertain to the RESPONSIBILITY MATRIX provided by DISTRICT as EXHIBIT D. CONSTRUCTION MANAGER shall commit the time and resources of the CONSTRUCTION MANAGER's team members throughout the life of the PROJECT, which are set forth in EXHIBIT B-2. CONSTRUCTION MANAGER's team members shall not be removed from the PROJECT or reassigned without the prior written consent of DISTRICT. DISTRICT reserves the right, at its sole discretion, to demand that any of CONSTRUCTION MANAGER's representatives, staff, or sub consultants be replaced with individuals satisfactory to DISTRICT. CONSTRUCTION MANAGER shall provide replacement personnel within ten days.

7. CONSTRUCTION MANAGER shall immediately advise DISTRICT of any incompatibility or inconsistency of agreements and contract documents between DISTRICT, its CONTRACTOR, and its CONSULTANTS.

8. CONSTRUCTION MANAGER shall perform its services hereunder in a prompt and timely manner and shall commence performance upon receipt of a written Notice to Proceed from DISTRICT. The Notice to Proceed shall set forth the date of commencement of performance.

9. CONSTRUCTION MANAGER shall maintain the Project Management System for tracking of each construction project. DISTRICT will provide access to Primavera Expedition 9.0 or most current as provided by DISTRICT and P3e/c for project management tracking. The CONTRACTOR and Architect shall utilize the Expedition and P3e/c Project Management System.

10. CONSTRUCTION MANAGER is responsible for assuring all input to the system is complete and updated in a timely manner. The Project Management System will be used for developing contact directories, managing project costs, documenting project issues, managing submittals, creating safety violation notices, managing the change order process, logging daily reports, generating payment requisitions and other related project management items and reports as determined by DISTRICT.

11. In the event of a conflict between the provisions of any exhibit to this AGREEMENT, the provisions of this AGREEMENT shall govern.

12. CONSTRUCTION MANAGER shall carefully review DISTRICT's Architectural Services Agreement and all plans and specifications provided by Architect, and shall assist DISTRICT in assuring compliance therewith by the Architect.

13. CONSTRUCTION MANAGER shall carefully review all CONTRACTOR submittals for accuracy and compliance with ARCHITECT submittals and shall assist DISTRICT in assuring compliance therewith by CONTRACTOR.

14. CONSTRUCTION MANAGER shall attend regular construction meetings scheduled to occur, plus special meetings as they are deemed necessary. CONSTRUCTION MANAGER shall take minutes of all such meetings.

15. CONSTRUCTION MANAGER shall abide by all regulations imposed by authorities having jurisdiction over the PROJECT.

16. Nothing in this AGREEMENT shall be construed to mean that CONSTRUCTION MANAGER assumes any of the responsibilities of CONSULTANT(s) or CONTRACTOR. CONTRACTOR will be solely responsible for construction means, methods, techniques, sequences and procedures used in the construction of the PROJECT and for the total job site safety of its personnel, stakeholders, property, and operations and for performing in accordance with the contract between DISTRICT and CONTRACTOR. CONSULTANT(s) are solely responsible for performing design, inspection, or other services in accordance with the contract between CONSULTANT(s) and DISTRICT. CONSTRUCTION MANAGER's

services shall be rendered compatibly and in cooperation with the services provided by CONSULTANT(s) and CONTRACTOR.

17. If CONSTRUCTION MANAGER observes or otherwise becomes aware of any fault or defect in the PROJECT or any work that does not comply with the requirements of all contract documents, plans, and specifications, CONSTRUCTION MANAGER immediately shall give written notice thereof to DISTRICT.

18. CONSTRUCTION MANAGER shall prepare and submit for DISTRICT review a periodic STAFFING PLAN describing the services to be performed and by whom (PROJECT team members) in the upcoming period. CONSTRUCTION MANAGER shall adjust staffing levels based on the actual readiness of the PROJECT for the specific services to be provided. Following review and approval by DISTRICT, CONSTRUCTION MANAGER shall ensure that the subsequent invoice is consistent with the previously approved periodic STAFFING PLAN as presented, related to the timeframe being invoiced.

19. All rights, documents, or other materials developed or discovered by CONSTRUCTION MANAGER or any other person engaged directly or indirectly by CONSTRUCTION MANAGER to perform the services hereunder shall be furnished to and remain the property of DISTRICT without reservation or limitation upon their use. All data, documents, discussions, or other information developed or received by or for CONSTRUCTION MANAGER in the performance of this AGREEMENT are confidential and shall not be disclosed to any person except as authorized by DISTRICT and as required by law.

20. Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by CONSTRUCTION MANAGER and made available at all reasonable times during the AGREEMENT period and for four years from the date of final payment under the AGREEMENT for inspection by DISTRICT.

21. CONSTRUCTION MANAGER shall comply with all applicable federal, state, county, and city statutes, regulations and ordinances, including but not limited to the Immigration Reform and Control Act of 1986. CONSTRUCTION MANAGER represents that it is an equal opportunity employer and it shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age, sexual orientation, or disability.

22. CONSTRUCTION MANAGER, and any other business with common ownership, may not serve as a General Contractor, Architect, or Engineer for the Project, or provide any other type of service related to the Project if CONSTRUCTION MANAGER's involvement would create a conflict of interest, or even the potential for a conflict of interest.

23. The duties, responsibilities, and limitations of authority of CONSTRUCTION MANAGER shall not be modified or extended without written agreement of DISTRICT.

24. CONSTRUCTION MANAGER shall promptly recommend rejection of work that does not conform to any of the following: the Contract Documents; CONSTRUCTION MANAGER's directives; applicable code requirements; approved Shop Drawings, Product Data,

and Samples; Clarification Drawings; or defective work. Such rejection will be transmitted to DISTRICT's representative in writing for communication to CONTRACTOR.

25. CONSTRUCTION MANAGER shall recommend special inspection or testing of the work in accordance with the provisions of the Contract Documents if, in CONSTRUCTION MANAGER's reasonable opinion, such inspection or testing is necessary or advisable for the implementation of the Contract Documents, regardless of the state of completion of the work subject to such inspection or testing.

26. CONSTRUCTION MANAGER shall accompany and assist DISTRICT representatives and DISTRICT with punch list inspections to determine Beneficial Occupancy, Substantial Completion, and Final Completion. CONSTRUCTION MANAGER shall advise on the issuance of the Certificate of Beneficial Occupancy and the Certificate of Substantial Completion in accordance with the Construction Contract Documents.

27. CONSTRUCTION MANAGER shall evaluate all services and promptly render written decisions on all claims, disputes or other matters in question between DISTRICT and CONTRACTOR relating to the execution or progress of the work as provided in the Contract Documents. CONSTRUCTION MANAGER shall not delay its interpretations, decisions, reviews, or any other functions pursuant to this AGREEMENT so as to cause or contribute to a disruption of construction or delay in completion of the PROJECT.

28. CONSTRUCTION MANAGER shall review Architect's certifications for payments to CONTRACTOR and CONTRACTOR's application for payment and advise DISTRICT as to what amounts, if any, should be paid.

29. At the written request of DISTRICT, CONSTRUCTION MANAGER shall perform additional services and CONSTRUCTION MANAGER shall be compensated for same as provided in Article V of this AGREEMENT. CONSTRUCTION MANAGER shall perform Additional Services only after DISTRICT and CONSTRUCTION MANAGER have executed a written Amendment to this AGREEMENT providing for such services.

ARTICLE III- DISTRICT'S RESPONSIBILITIES

1. DISTRICT's instructions to and direction of CONSTRUCTION MANAGER shall be made and given by the designated Campus Program Manager or the Physical Facilities Coordinator or designee. CONSTRUCTION MANAGER may rely on the instructions or direction of the Authorized Representative or designee.

2. DISTRICT's Authorized Representative and the designated Campus Program Manager shall make themselves available to CONSTRUCTION MANAGER on a regular basis for PROJECT coordination meetings in order to facilitate communication and a constructive, effective relationship.

3. DISTRICT shall make reasonable efforts to furnish required information and approvals and perform its responsibilities and activities in order to facilitate orderly progress of the work, in cooperation with CONSTRUCTION MANAGER, consistent with this

AGREEMENT and in accordance with the planning and scheduling requirements and budgetary limits of the PROJECT.

4. DISTRICT shall retain, or has retained, an Architect whose services, duties, and responsibilities shall be described in a written agreement between DISTRICT and Architect. DISTRICT shall, in its agreement with the Architect, require that the Architect perform its services in cooperation with CONSTRUCTION MANAGER, consistent with this AGREEMENT and in accordance with the planning and scheduling requirements and budgetary restraints of the PROJECT as determined by DISTRICT and documented by CONSTRUCTION MANAGER. DISTRICT will provide to CONSTRUCTION MANAGER a copy of the AGREEMENT between DISTRICT and Architect.

5. DISTRICT will make reasonable efforts to see that agreements between DISTRICT and CONTRACTOR are compatible and consistent with this AGREEMENT. DISTRICT will provide a copy of this AGREEMENT to Architect and CONTRACTOR with written notice that they shall recognize CONSTRUCTION MANAGER as DISTRICT's agent in providing CONSTRUCTION MANAGER's services specified in this AGREEMENT.

6. DISTRICT shall secure, submit, and pay for necessary approvals, easements, assessments, building permits, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities. CONSTRUCTION MANAGER shall actively assist, cooperate, and coordinate in DISTRICT's efforts to obtain such approvals, easements, assessments, permits, and charges.

7. DISTRICT shall require the Architect to send to CONSTRUCTION MANAGER copies of all notices and communications sent to or received by the Architect relating to the PROJECT. District shall send to CONSTRUCTION MANAGER a copy of all other notices and communications sent to or received by DISTRICT.

ARTICLE IV– TERM, SUSPENSION OR TERMINATION

1. The effective date of this AGREEMENT shall be the later date of execution by the signing Parties.

2. This AGREEMENT shall commence as of the effective date and continue through the substantial completion and final acceptance (final punch list) of the PROJECT, which shall include obtaining the certificate of beneficial occupancy and the certificate of substantial completion in accordance with the construction contract documents and final acceptance by the DISTRICT Board of Trustees.

3. DISTRICT shall have the right to suspend the PROJECT at any time at DISTRICT's sole discretion. If the PROJECT is suspended by DISTRICT for more than ninety consecutive days, CONSTRUCTION MANAGER shall be compensated for services performed prior to notice of such suspension and shall not be compensated for any unearned fees or costs or anticipated profits on non-performed services.

4. DISTRICT may terminate this AGREEMENT by written notice should CONSTRUCTION MANAGER fail substantially to perform in accordance with the terms of this AGREEMENT, through no fault of DISTRICT. CONSTRUCTION MANAGER shall not be compensated for any unearned fees, costs, or anticipated profits on non-performed services. In the event of termination due to the fault of CONSTRUCTION MANAGER, CONSTRUCTION MANAGER shall be liable for all damages suffered by DISTRICT due to CONSTRUCTION MANAGER's failure to perform as provided in this AGREEMENT.

5. DISTRICT shall also have the right to terminate this AGREEMENT at any time in its sole discretion and without cause upon not less than fourteen days written notice to CONSTRUCTION MANAGER. In that event, CONSTRUCTION MANAGER shall be compensated for services performed up to date of termination and shall not be compensated for any unearned fees, costs, or anticipated profits on non-performed services.

6. CONSTRUCTION MANAGER may terminate this AGREEMENT if:

a. Despite having employed its best efforts, DISTRICT fails to pay CONSTRUCTION MANAGER's invoice within ninety days of the statement date; or

b. DISTRICT breaches any of its obligations under this AGREEMENT and fails to commence to cure the breach within thirty days of the date of written notice of such breach.

7. In the event of AGREEMENT termination by either Party for any reason, DISTRICT reserves the right to receive, and CONSTRUCTION MANAGER shall promptly provide to DISTRICT, all drawings, specifications, models, and other documents and materials prepared by CONSTRUCTION MANAGER or others for the PROJECT. In the event of termination, any dispute regarding the amount to be paid shall not derogate from the right of DISTRICT to receive and use any such documents or materials.

ARTICLE V- PAYMENTS TO CONSTRUCTION MANAGER

1. DISTRICT shall pay CONSTRUCTION MANAGER, based on properly submitted invoices, including weekly labor summaries supported by timesheets with costs and fund source (if applicable) consistent with services rendered by CONSTRUCTION MANAGER, described on attached EXHIBIT A – SCOPE OF SERVICES, and approved as eligible compensation within EXHIBIT B-1 – SCHEDULE OF FEES; EXHIBIT B-2 – BASIC SERVICES HOURLY RATES; EXHIBIT B-3 – REIMBURSABLES SCHEDULE, provided such total labor and compensation, and reimbursable expenses are within the approved budgeted amount for the calendar month. Under no circumstances are budgeted hours identified in the approved STAFFING PLAN to be construed in any way as an entitlement of fees to CONSTRUCTION MANAGER.

2. Reimbursable Expenses are in addition to compensation for CONSTRUCTION MANAGER for Basic and Additional Services and include expenses actually incurred by CONSTRUCTION MANAGER for the PROJECT, as follows:

a. If authorized in writing in advance by DISTRICT, expenses in connection with authorized out-of-town travel, and fees paid for securing approval of authorities having jurisdiction over the PROJECT. Unless authorized in writing in advance, DISTRICT will not reimburse CONSTRUCTION MANAGER's employees and CONSULTANT(s) for travel time or expense for traveling to/from office and the PROJECT or other locations.

b. If authorized in writing in advance by DISTRICT, expenses of overtime work requiring higher than regular rates.

3. CONSTRUCTION MANAGER reimbursable expenses, in addition to the fees paid by DISTRICT, shall be billed at actual cost and will also be specifically and properly invoiced on a monthly basis. The costs itemized on EXHIBIT B-3 as "REIMBURSABLES SCHEDULE" shall be considered as reimbursable by DISTRICT.

4. CONSTRUCTION MANAGER shall submit monthly invoices referencing that applicable purchase order number; PROJECT name [insert project name] to DISTRICT which shall include the following:

a. Fees: the date, number of hours, name and title of person performing the services, and the corresponding fees charged for such services in accordance with the BASIC SERVICES HOURLY RATES, as delineated in EXHIBIT B-2. Only PROJECT personnel identified in EXHIBIT B-2 – BASIC SERVICES HOURLY RATES are eligible to be billed against this contract.

b. Reimbursable Expenses: an itemization of the specific nature and cost of expenses for which CONSTRUCTION MANAGER is seeking reimbursement, in accordance with the REIMBURSABLES schedule, as delineated in EXHIBIT B-3.

5. DISTRICT shall make reasonable efforts to pay each monthly invoice within thirty days after DISTRICT's receipt thereof provided complete backup documentation is delivered with the invoice. DISTRICT shall make a reasonable effort to promptly review each invoice and raise any questions or dispute in writing within thirty days of receipt thereof.

ARTICLE VI- INDEMNITY AND INSURANCE

1. To the fullest extent permitted by law, CONSTRUCTION MANAGER agrees to indemnify, defend, and hold DISTRICT, its Board of Trustees, employees, and agents entirely harmless from all liability:

a. on account of any and all claims under workers' compensation acts and other employee benefit acts with respect to CONSTRUCTION MANAGER and its employees arising out of CONSTRUCTION MANAGER's work under this AGREEMENT; and

b. on account of any and all claims for damages because of personal injury, death, or damage to property, or other costs and charges arising out of or attributable to,

in whole or in part, CONSTRUCTION MANAGER's breach of the AGREEMENT, negligent acts, errors and/or omissions, or willful acts in the performance of this AGREEMENT, or the negligent acts, errors, and/or omissions, or willful acts of CONSTRUCTION MANAGER's employees, agents, or consultants in the performance of this AGREEMENT. The coverages of such indemnification shall include, without limitation, reasonable attorneys' fees and court costs incurred by DISTRICT with regard thereto. Said indemnity is intended to apply during the period of this AGREEMENT of CONSTRUCTION MANAGER's performance and shall survive the expiration or termination of this AGREEMENT until such time as any action against DISTRICT on account of any matter covered by such waiver or indemnity is barred by any applicable statute of limitations.

2. The indemnification obligations under this Article shall not be limited by any assertion or finding that (1) the person or entity indemnified is liable by reason of non-delegable duty, or (2) the losses were caused in part by the negligence of, breach of contract by, or violation of law by DISTRICT. The obligation to defend shall arise regardless of any claim or assertion that DISTRICT caused or contributed to the losses. CONSTRUCTION MANAGER's reasonable defense costs (including attorney and expert fees) incurred in providing a defense for DISTRICT shall be reimbursed by DISTRICT except to the extent such defense costs arise, under principles of comparative fault, from CONSTRUCTION MANAGER's (a) negligent acts or omissions; (b) breach of any of the provisions of this AGREEMENT; or (c) willful misconduct.

3. Nothing in this AGREEMENT, including the provisions of this Article, shall constitute a waiver or limitation of any rights DISTRICT may have under applicable law, including without limitation, the right to implied indemnity.

4. CONSTRUCTION MANAGER shall purchase and maintain with an insurer or insurers qualified to do business in the State of California and acceptable to DISTRICT policies of insurance which will protect CONSTRUCTION MANAGER and DISTRICT from claims which may arise out of or result from CONSTRUCTION MANAGER's actions or inactions relating to the AGREEMENT, whether such be by itself or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

a. Worker's Compensation and Employers' Liability Insurance in the amounts required by law covering all personnel employed by CONSTRUCTION MANAGER on the premises during the term of this AGREEMENT whether said personnel are employed by CONSTRUCTION MANAGER or supplied by persons or entities engaged by CONSTRUCTION MANAGER.

b. Comprehensive General and Auto Liability Insurance with limits of not less than \$1,000,000 combined single limit, bodily injury and property damage liability per occurrence with no annual aggregate limits, including:

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- i. Owned, Non-owned and Hired Vehicles
- ii. Blanket Contractual
- iii. Broad Form Property Damage
- iv. Products/Completed Operations
- v. Personal Injury

c. Professional Liability insurance, including Contractual Liability, with limits of \$1,000,000. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least five years thereafter. In the event that CONSTRUCTION MANAGER subcontracts or assigns any portion of its duties, it shall require any such subcontractor to purchase and maintain insurance coverage as provided in this subparagraph.

d. Each policy of insurance required in a, b and c above (with the exception of Worker's Compensation) shall name DISTRICT and its trustees, officers, agents, and employees as additional insureds; shall state that, with respect to the operations of CONSTRUCTION MANAGER hereunder, such policy is primary and any insurance carried by DISTRICT is excess and non-contributing with such primary insurance, shall state that not less than thirty days' written notice shall be given to DISTRICT prior to cancellation, and shall waive all rights of subrogation against DISTRICT and its trustees, officers, agents, and employees. CONSTRUCTION MANAGER shall notify DISTRICT in the event of material change in, or failure to renew, each policy. Prior to commencing work, CONSTRUCTION MANAGER shall deliver to DISTRICT certificates of insurance and additional insured endorsements as evidence of compliance with the requirements herein to be attached hereto as EXHIBIT C.

5. DISTRICT's exercise of any of its rights or remedies prescribed in this AGREEMENT shall not relieve CONSTRUCTION MANAGER from responsibility for damages or other losses incurred or to be incurred by DISTRICT as a result of CONSTRUCTION MANAGER's breach of its obligations under this AGREEMENT.

ARTICLE VII- ALTERNATIVE DISPUTE RESOLUTION

Disputes arising from this AGREEMENT or related in any manner to the same shall be resolved as follows:

1. Any dispute arising under or relating to this AGREEMENT, whether based on contract, tort, statute, or other legal or equitable theory, will be submitted to arbitration in the County of Orange, State of California before a retired California Superior Court Judge or retired California Appellate Court or Supreme Court Justice or before a retired Federal Court Judge or Justice. If the Parties are unable to agree as to an arbitrator, the arbitration shall be submitted before the Judicial Arbitration and Mediation Services, Inc. ("JAMS") or Judicate West or the American Arbitration Association ("AAA"). The Parties may agree on an arbitrator from the

selected entity's panel. If they are unable to agree, the selected entity will provide a list of at least three available arbitrators and each Party may strike one. The arbitration tribunal shall select the arbitrator from the remaining names. The arbitration shall be held in accordance with the rules of the selected entity and California substantive law shall apply. The arbitrator shall award costs and attorneys' fees to the prevailing Party. The Parties shall be entitled to only the following limited discovery:

a. Each Party shall exchange all documents relevant to the subject matter of the dispute.

b. Each Party shall be entitled to one deposition limited to four hours.

c. Each Party may serve one set of interrogatories limited to 25 interrogatories, including subparts.

d. Each Party may make application to the arbitrator to order the deposition of a witness to be taken for use as evidence and not for discovery if (i) the witness cannot be compelled to attend the hearing; or (ii) as such exceptional circumstances exist as to make it desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses at the hearing to allow the deposition to be taken.

e. Each Party shall advance one-half of the costs of the arbitration proceedings, including any administrative costs and arbitrator expenses subject to being reimbursed by an award of the arbitrator of costs.

2. If any claim arises under the construction contract documents for the PROJECT which is submitted to arbitration, and any CONSULTANT or CONTRACTOR or DISTRICT claims that the acts or omissions of CONSTRUCTION MANAGER are involved in whole or in part in any claim by or against DISTRICT, such may be asserted at the option of DISTRICT against CONSTRUCTION MANAGER in the same arbitration proceeding involving the DISTRICT which shall be conducted under the procedure specified in the general conditions of the construction contract.

3. Concurrent disputes under this AGREEMENT shall be consolidated into a single arbitration unless the Parties otherwise agree in writing and no hearing shall be held prior to final completion of the PROJECT unless DISTRICT and CONSTRUCTION MANAGER otherwise agree in writing.

4. Any arbitration award shall be subject to confirmation, vacation, or correction under the procedures and on the grounds specified in the California Code of Civil Procedure, including, without limitation, Section 1296.

ARTICLE VIII- MISCELLANEOUS PROVISIONS

1. This AGREEMENT shall be interpreted and governed by the laws of the State of California. If any action, court or arbitration is brought arising out of this AGREEMENT, including but not limited to any claims for breach, interpretation, cancellation or specific

performance of the same or any tort claims relating thereto, said action shall be brought in the appropriate court or arbitration tribunal in Orange County, California.

2. Neither this AGREEMENT nor any interest therein may be assigned by CONSTRUCTION MANAGER without the prior written consent of DISTRICT, which consent may be withheld by DISTRICT in its sole and absolute discretion. Any attempt by CONSTRUCTION MANAGER to assign this AGREEMENT shall be void and a material breach of this AGREEMENT and DISTRICT may immediately terminate this AGREEMENT.

3. This AGREEMENT represents the entire and integrated agreement between DISTRICT and CONSTRUCTION MANAGER and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be amended only by written instrument signed by both DISTRICT and CONSTRUCTION MANAGER and approved by DISTRICT's Board of Trustees.

4. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of a third party against either DISTRICT or CONSTRUCTION MANAGER.

5. Time is of the essence for this AGREEMENT. CONSTRUCTION MANAGER acknowledges that all time limits stated in this AGREEMENT are of the utmost importance to DISTRICT. CONSTRUCTION MANAGER shall meet the PROJECT Schedule, which may be revised from time to time by mutual written agreement, for completion of CONSTRUCTION MANAGER's services. The total time schedule for full completion of CONSTRUCTION MANAGER's services for each phase of the PROJECT shall not exceed the durations listed, unless mutually agreed upon in writing by CONSTRUCTION MANAGER and DISTRICT. The durations for DISTRICT review period listed in the PROJECT Schedule shall be computed from the date on which a clear, complete submittal is received by DISTRICT. DISTRICT's failure to meet its commitment to provide written requested information or to review within the stipulated time frames may be cause for an adjustment in the PROJECT Schedule.

6. Notwithstanding anything to the contrary, to the extent allowed by law, DISTRICT shall not be liable for any special, indirect, exemplary, punitive, consequential, or incidental damages, including, without limitation, lost revenues, anticipated revenues or profits relating to the same arising from any claim relating directly or indirectly to this AGREEMENT whether a claim for such damages is based on warranty contract tort (including, without limitation, negligence, or strict liability) even if the Parties are advised of the likelihood or possibility of the same.

7. CONSTRUCTION MANAGER shall perform the services provided on EXHIBIT A as an independent CONTRACTOR having control over the manner in which the services are performed. CONSTRUCTION MANAGER is not an employee of DISTRICT and is not entitled to participate in any pension plan, bonus or similar benefit that DISTRICT may provide DISTRICT's employees. DISTRICT is not responsible for withholding from CONSTRUCTION MANAGER's compensation or to contribute any amount on behalf of CONSTRUCTION MANAGER for social security, taxes, unemployment insurance, workers' compensation insurance, federal or state income tax, withholding, or other payments.

8. This AGREEMENT shall be binding on and inure to the benefit of the successors and assigns of the Parties hereto.

ARTICLE IX- NOTICES

Any notice or communication required or permitted to be given hereunder or by law shall be in writing and served personally, delivered by courier, or sent by United States certified mail, postage prepaid with return receipt requested, addressed to the other Party as follows:

To: DISTRICT: Coast Community College District
 Attn: Vice Chancellor Administrative Services
 1370 Adams Avenue
 Costa Mesa, CA 92626

Coast Community College District
Attn: Physical Facilities Coordinator
1370 Adams Avenue
Costa Mesa, CA 92626

To: CONSTRUCTION MANAGER:

Any such notices personally served or delivered by courier should be effective when received. All notices sent by certified mail shall be effective forty-eight hours after deposited in the mail.

Each Party shall make a reasonable, good faith effort to ensure that it will accept or receive notices that are given in accordance with this paragraph. A Party may change its address for purposes of this paragraph by giving the other Party written notice of a new address in the manner set forth above.

IN WITNESS WHEREOF, DISTRICT and CONSTRUCTION MANAGER execute this AGREEMENT as of the date written below.

COAST COMMUNITY COLLEGE DISTRICT

CONSTRUCTION MANAGER

President, Board of Trustees

Name/Title:

Dated: _____

Dated: _____