

OHLONE COMMUNITY COLLEGE DISTRICT

MEMORANDUM

TO: Board of Trustees
FROM: Douglas Treadway
DATE: September 27, 2006
SUBJECT: Award of contract to Consolidated CM, Inc. for Construction Management Services

The District issued a "Request for Qualifications/Proposals" (RFP) for Construction Management Services for the new Student Services Building. Seven firms submitted proposals. The selection committee reviewed the proposals and interviewed the top four firms. References were checked and the selection committee found the best-qualified firm for the Student Services Project to be Consolidated CM, Inc. in Oakland. Consolidated CM has extensive experience in schools and universities, and they have also worked on several Ohlone College projects.

The contract total for Consolidated CM, Inc. for the Construction Management Services for the Ohlone College Student Services Building shall not exceed \$721,208.00, which includes Construction Management Services, not to exceed \$709,058.00 plus reimbursable costs not to exceed \$12,150.00.

RECOMMENDATION:

The President/Superintendent recommends that the Board of Trustees award the contract for Construction Management Services for Ohlone College Student Services Building in the amount not to exceed \$721,208.00.

Attachment: Consolidated CM Contract

AGREEMENT FOR CONSULTANT SERVICES

Construction Management Services

Contract Number: 264-0806-001

This Agreement for Consultant Services (“Agreement”) is entered into this 27th day of September, 2006 by and between **Ohlone Community College District (“District”)** and **Consolidated CM, Inc. 180 Grand Avenue, Suite 1520, Oakland, California 94612 (“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 desires to obtain certain consulting services, (“Consultant Services”) as more particularly identified and described in Addendum No. 1 to this Agreement.

WHEREAS, Consultant is duly qualified and capable of providing and performing the Consultant Services set forth herein and in Addendum No. 1; if any portion of the Consultant Services require, by applicable law, rule or regulation, that Consultant be licensed to provide the Consultant Services, Consultant is and will be properly licensed at all times while providing such Consultant Services.

WHEREAS, on or about July 27, 2006, the District issued a Request for Qualifications (“RFQ”) pursuant to which the District solicited responses from Consultants to provide the Consultant Services described in the RFQ and in this Agreement; by this reference, the RFQ is incorporated herein.

WHEREAS, on or about August 24, 2006, the Consultant submitted a response to the RFQ (“the RFQ Response”) which is incorporated herein by this reference.

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

AGREEMENT

1 CONSULTANT SERVICES

- 1.1 **Scope of Consultant Services.** The Consultant Services are those set forth in Addendum No. 1 to this Agreement. The Consultant will identify specific personnel who will be assigned Consultant Services along with a description of the Consultant Services to be performed or provided by personnel identified by the Consultant. Personnel identified by the Consultant for portions of the Consultant Services shall be subject to the District’s approval and other approvals required by applicable law, rule or regulation. Except as set forth in this Agreement or Addendum No. 1, the Consultant shall provide all materials, tools and other items necessary to complete the Consultant Services and authorized Additional Consultant Services.
- 1.2 **Additional Consultant Services.** Services not included in the Consultant Services are Additional Consultant Services. Without invalidating this Agreement, the District may make changes to the Consultant Services by adding, deleting or modifying the Consultant Services described in Addendum No. 1 by written notice to the Consultant. If Additional Consultant Services are authorized by the District, which do not result from the Consultant’s fault or neglect, the Consultant will be compensated for authorized Additional Consultant Services in accordance with this Agreement.
- 1.3 **Consultant Standard of Care.** The Consultant Services and authorized Additional Consultant Services; if any, shall be performed and provided by Consultant: (a) using the Consultant’s best skill and attention; (b) with due care

and in accordance with applicable standards of professional care; and (c) in accordance with applicable laws, rules and regulations. The Consultant acknowledges that the Consultant Services may be provided and performed in conjunction with other services provided by other parties relating to the same subject matter. Accordingly, Consultant acknowledges and agrees that the Consultant 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 services under this Agreement and services of others relating to the subject matter of this Agreement. The Consultant is liable to the District for the consequences of its failure to provide, perform and/or complete the Consultant Services or authorized Additional Consultant Services in an untimely manner.

- 1.4 **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 and Addendum No. 1 hereto 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 to act on behalf of the District.

2 **CONTRACT PRICE.**

- 2.1 **Contract Price for Consultant Services.** The basis of the District's payment of the Contract Price for the Consultant Services shall be in accordance with Addendum No. 1. Except for allowable Reimbursable Expenses, if any, pursuant to Addendum No. 1, the Contract Price set forth in Addendum No. 1 for the Consultant Services represents the full amount due from the District to the Consultant for the Consultant 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 Consultant 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 Mateo, San Francisco, Contra Costa and Alameda**, profit and administrative and overhead costs (including without limitation insurance) arising out of or associated with this Agreement.
- 2.2 **Additional Consultant Services.** If the District authorizes Additional Consultant Services, the District's payment of such Additional Consultant Services shall be based upon a mutually agreed upon lump sum fixed price. If mutual agreement is not reached, authorized Additional Consultant Services will be compensated based upon the time reasonably necessary to complete the authorized Additional Consultant Services multiplied by the applicable personnel hourly rate set forth in Exhibit C to this Agreement.
- 2.3 **Reimbursable Expenses.** The extent to which any expenses are set forth in Addendum No. 1 as allowable Reimbursable Expenses, the Consultant will be paid the direct actual costs (including credits for trade discounts) of the allowable Reimbursable Expense.
- 2.4 **Consultant Billings for Payment of Contract Price.** During the course of providing Consultant Services, Consultant shall submit monthly billing invoices to the District for payment of the Contract Price for Consultant Services, authorized Additional Consultant Services and allowable Reimbursable Expenses performed or incurred in the immediately prior month. Consultant's billings shall be in such form and format as may be reasonably requested by District.
- 2.5 **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 Consultant Services, authorized Additional Consultant Services and allowable Reimbursable Expenses. The District may 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.
- 2.6 **Consultant's Payments.** The Consultant shall promptly pay its employees, Sub-Consultants, if any, and others performing or providing Consultant Services or authorized Additional Consultant 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 Consultant Services or authorized Additional Consultant 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 Consultant Services or authorized Additional Services, the obligation for compliance rests solely with the Consultant.

3 **INSURANCE; INDEMNITY**

- 3.1 **Consultant Insurance.** At all times during performance of Consultant Services and authorized Additional Consultant Services, the Consultant shall maintain policies of insurance in the minimum coverage amounts set forth in Addendum No. 1 to this Agreement.
- 3.2 **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 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.
- 3.3 **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 Consultant 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, arising out 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. District shall be an additional named insured to Consultant's commercial general liability insurance policy.
- 3.4 **Professional Liability Insurance.** If required by Addendum No. 1 to this Agreement, the professional liability insurance shall cover liabilities arising out of the performance of services under this Agreement.
- 3.5 **Policy Endorsements; Evidence of Insurance.** Consultant 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.
- 3.6 **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.

3.7 **Indemnity.**

- 3.7.1 **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 from any and all claims, demands, losses, responsibilities or liabilities for: (a) injury or death of Consultant's employees arising out of this Agreement; (b) injury or death of persons, damage to property; or (c) 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 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 District 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.
- 3.7.2 **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 **TERMINATION; SUSPENSION**

- 4.1 **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: (a) 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 (b) 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 Consultant Services, authorized Additional Consultant 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. Consultant shall remain responsible and liable to District for 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 Consultant Services, Reimbursable Expenses or authorized Additional Consultant Services.
- 4.2 **District Right to Suspend.** The District may, in its discretion, suspend all or any part of the Consultant Services hereunder; provided, however, that if the District shall suspend Consultant Services 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 Consultant Services hereunder.
- 4.3 **District Termination For District Convenience.** The District may, at any time, upon seven (7) days advance written notice to Consultant terminate this Agreement for the District's convenience and 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 Consultant Services, authorized Additional Consultant Services or allowable Reimbursable Expenses provided or incurred through the effective date of termination plus actual costs incurred by Consultant directly attributable to such termination. Except as set forth above, the Consultant shall not be entitled to other compensation if the District exercises the right to terminate hereunder.
- 4.4 **Consultant Suspension of Consultant Services.** If the District shall fail to make payment of the Contract Price when due Consultant hereunder, Consultant may, upon seven (7) days advance written notice to the District, suspend further performance of services hereunder until payment in full is received. In such event, Consultant shall

have no liability for any delays or additional costs of Project design or construction due to, or arising out of, such suspension.

- 4.5 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 preparation of the Design Documents or Project construction. If requested by the District, the Consultant shall within five (5) days of such request, assemble and deliver to the District all work product, Consultant Deliverables 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, Project records 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.

5 MISCELLEANOUS

- 5.1 Governing Law; Interpretation/Venue.** 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. The venue shall be in Alameda County, California. 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 here from, but all remaining provisions will remain and continue in full force and effect.
- 5.2 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.
- 5.3 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.
- 5.4 Ownership.** Records, documents and other materials generated or received by Consultant in the course of performing services hereunder shall be delivered to the District upon completion of the Consultant Services hereunder. Consultant may, at its sole cost, make copies of such records for its own files. All work product of the Consultant generated during the course of providing Consultant Services, whether tangible or intangible, shall be deemed the sole property of the District.
- 5.5 Notices.** Notices under this Agreement to the Consultant shall be addressed and delivered as set forth in Addendum No. 1. Notices to the District shall be addressed and delivered as follows:

**Marian Castaneda
Ohlone Community College District
43600 Mission Blvd
Fremont, CA 94539**

- 5.6 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.
- 5.7 Disputes.**
- 5.7.1 Consultant Continuation of Services.** Except in the event of the District's failure to make undisputed payment of the Contract Price due Consultant, notwithstanding any disputes between District and Consultant hereunder, Consultant shall continue to provide and perform Consultant and authorized Additional Services pending a subsequent resolution of such disputes.
- 5.7.2 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 the American Arbitration Association ("AAA") and the Construction Mediation Rules of the AAA in effect at the time that a Demand For Mediation is filed. 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.

5.7.3 **Arbitration.** All claims, disputes or other matters in controversy between Consultant 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 the AAA Commercial Arbitration Rules in effect at the time of the filing of a Demand for Arbitration. If any claim or dispute is asserted by others providing services in connection with the subject matter of this Agreement and such other claim or dispute arises 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 AAA Regional Office closest to the District's administrative offices.

5.7.4 **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. If there is any conflict or inconsistency between the terms of this Agreement or the terms of Addendum No. 1 and the RFQ Response, the terms of this Agreement and/or terms of Addendum No. 1 shall govern and prevail over the RFQ Response. This Agreement, the accompanying General Conditions and the documents enumerated below, if any, are all of the documents forming a part of the Agreement.

RFQ #264-0806

Addendum No. 1

Exhibit A: Revised Student Services Building Staffing Plan/Rate Schedule

Exhibit B: Revised Student Services Building Reimbursable Costs Budget

Exhibit C: Student Services Building Additional Services Rate Schedule

Exhibit D: "Other" Renovations and Repairs Projects Rate Schedule

Exhibit E: Proposed Staff Organization Chart

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

DISTRICT
OHLONE
COMMUNITY COLLEGE DISTRICT

CONSULTANT
Consolidated CM, Inc.

By: _____
Marian Castaneda, Director of Purchasing,
Contract Administration and Auxiliary Services

By: _____

Printed Name and Title:

Date Signed: _____

GENERAL CONDITIONS

Construction Management Services

1. RELATIONSHIP OF PARTIES

- 1.1. **Relationship of Construction Manager (“CM”) to Other Project participants.** CM’s services shall be provided in conjunction with contract(s) between the District and the Architect and General Contractor(s). The Architect is responsible for the adequacy and sufficiency of the Project design and the content of Design Documents for the Project. The Architect shall perform its duties in accordance with its contract(s) with the District. Except as expressly set forth herein, neither this Agreement, nor CM’s rendition of services hereunder shall be deemed CM’s assumption of responsibility for (a) the adequacy of sufficiency of the Project design or the Design Documents for the Project, which remains that of the Architect; or (b) construction means, methods or sequences or safety at the Site, all of which are and remain the responsibility of General Contractor(s). The CM will work closely with the District’s Director of Facilities and Measure A Bond Program Manager.
- 1.2. **CM Independent Contractor Status: CM As Agent of District.** In providing services hereunder, CM shall be an independent contractor to the District. The express terms hereof set forth the limited extent to which CM is authorized to act as an agent on behalf of the District. CM shall be responsible to the District and third parties for the consequences of CM’s actions or conduct as an ostensible agent of the District, which exceeds the express limited scope of CM’s agency authority, set forth herein.

1.3. District Responsibilities

- 1.3.1. **Information.** The District shall provide full information regarding the Project, including the District’s objectives, schedule requirements and other constraints and requirements, which may affect the Project Budget, time for Project completion or Project scope.
- 1.3.2. **District Representative.** The District shall designate a representative to act on the District’s behalf with respect to the Project and who shall be authorized to render decisions on behalf of the District and to carry out the District’s responsibilities under this Agreement, all of which shall be discharged or performed in a manner so as to avoid unreasonable delay in the orderly and sequential progress of the Project construction and CM’s services hereunder.
- 1.3.3. **Construction Tests, Approvals and Inspections.** The District shall furnish or contract for and pay the costs of all tests, approvals or inspections required by law or other deemed necessary or appropriate in connection with construction of the Project or portions thereof.
- 1.3.4. **District Consultants.** The District shall furnish all legal, accounting, insurance and other consulting services as may be necessary for the Project.
- 1.3.5. **CM Standard of Care.** CM shall provide the Basic Services and authorized Additional Services using its best professional skill and judgment, acting with due care and in accordance with professional standards of care, the terms hereof and applicable law, code, rule or regulation. CM’s services hereunder shall be provided promptly and in such manner as to avoid hindrance, interruption or delay to the orderly progress and completion of Project design and construction.

2. BASIC SERVICES

- 2.1. **Basic Services.** CM will perform all the Basic Services enumerated herein and establish a construction management organization appropriately staffed to perform the Basic Services. CM’s personnel and the specific roles, authority and responsibility of the CM’s personnel are subject to the reasonable approval of the District. The CM shall designate a Project Manager who shall be reasonably satisfactory to the District and who shall have the overall responsibility for performance of CM’s obligations hereunder and be authorized to act on behalf of the CM in discharge of CM’s services hereunder.
- 2.2. **Pre-Construction Phase.**
- 2.2.1. Provide preliminary evaluation of the scope, design, and budget, as each relates to the other. Review schematic budgets, assist District in maintaining mutually agreed upon scope, Project budget, and other design parameters. Provide cost evaluations of alternate materials and systems, if required.

- 2.2.2. Review current designs and through their development, provide evaluations of the scope, design, budget, and schedule. Advise on selection of materials, building systems, equipment, and methods of Project bidding and delivery. Provide recommendations on alternative designs or materials, preliminary budget savings and possible economics, if required.
- 2.2.3. With input from District and Architect, develop a Project Construction Schedule providing for all major elements such as phasing of construction and the times of commencement and completion of each phase.
- 2.2.4. Coordinate contract documents by consulting with District and District's Consultants regarding drawings and specifications as they are being prepared, and recommending alternative solutions whenever design details affect construction feasibility, cost or schedules.
- 2.2.5. Construction Manager shall endeavor to develop bidders' interest in the project, assist with the establishment of bidding schedules and bidding documents. Assist with conducting pre-bid conferences as may be required to familiarize bidders with the bidding documents, management techniques and any special systems, materials or methods; and assist District's staff with the receipt of questions from bidders, and the issuance of addenda.
- 2.2.6. Construction Manager shall not be a bidder nor participate with others in individual contracts within the project.
- 2.2.7. Construction Manager shall assist with the receipt of bids, prepare bid summaries and make recommendations to District for the award of contracts or rejection of bids.
- 2.2.8. Conduct pre-award conferences with successful bidders with the assistance of the Architect.
- 2.2.9. Assist with the solicitation of bids for District to purchase various materials, products or supplies, which will be incorporated into the work under the construction phase of the Project.

2.3. **Construction Phase.**

- 2.3.1. **Administration and Coordination of Contract and construction.** CM will provide administrative, management and related services necessary to generally administer the Contract and to coordinate the work of the Contractor during the Construction Phase of the Project, including:
 - 2.3.1.1. Receive, review and forward to the District and the Architect the Contractor(s) Certificates of Insurance and Bonds along with commentary as to the extent to which such Certificates of Insurance and Bonds comply with the applicable terms of the Contract Documents.
 - 2.3.1.2. Advice and recommendations to the District for issuance of Notice to Proceed for Contract.
 - 2.3.1.3. Scheduling, coordinating and conducting pre-construction and construction meetings; recording, maintaining and distributing minutes thereof.
 - 2.3.1.4. Generally coordinate the sequence and schedule for Contractor's work, including the allocation of space in areas where Contractor and subcontractors are performing construction activities.
 - 2.3.1.5. In consultation with the Architect, develop and implement procedures for the submittal and processing of required State Submittals and coordinate the same for transmittal to the Architect for review and approval.
 - 2.3.1.6. In consultation with the District and the Architect, develop and implement procedures for the handling and disposition of Contractor's requests for information or clarification.
 - 2.3.1.7. Establish and implement procedures for the transmittal and receipt of communications, drawings and other information between CM, Architect and General Contractor relating to Project construction.
 - 2.3.1.8. Assist the District in selection and retention of testing laboratories and inspection services for Project construction.

2.3.2. **Monitoring of Construction Costs, General Contractor's Applications for Payment.**

- 2.3.2.1. **Construction Costs.** CM will monitor the Construction Costs and advise the District of the Financial condition of the Project by:

- 2.3.2.1.1. Development of Project cash flow reports, forecasts and other financial reports to the District, including those reflecting variations between actual Construction Costs and the Construction Costs budget and estimated costs of unperformed Project activities.
 - 2.3.2.1.2. Maintenance of records reflecting the actual costs for activities completed or in progress, including records relating to work performed on a unit cost basis and additional work performed by the General Contractor and/or subcontractor(s) on a time and materials basis.
 - 2.3.2.1.3. Monitor and advise the District of costs pertaining to potential, pending and completed change orders to Contract.
 - 2.3.2.1.4. Advising and making recommendations to the District for adjustments to the Construction Cost Budget relative to actual or anticipated construction costs.
- 2.3.3. **Application for Progress Payments.** CM will participate in the review and disbursement of progress payments to the General Contractor and in consultation with the District and the Architect, make recommendations for the disbursement of progress payments to the General Contractor as follows:
- 2.3.3.1. CM will assist in the development of procedures for submittal, review processing and disbursement of progress payments on the Project, along with associated forms and reporting systems.
 - 2.3.3.2. Based on CM's observations and evaluations of the General Contractor's Application for progress payment, CM will review and certify to the District the amount due on each such application for progress payment; CM's certifications constitute a representation to the District that, based on CM's knowledge, information and belief, the Work has progressed to the point indicated in the application for progress payment and the quality of the Work is in general in accordance with the Contract Documents for that Contract.
 - 2.3.3.3. CM's representations relative to applications for progress payment are subject to an evaluation of the Work for conformity with the Contract Documents for the Contract upon Substantial Completion, results of subsequent tests and procedures, minor deviations from the Contract Documents correctable prior to completion and any specific qualifications expressed by CM in its certifications.
 - 2.3.3.4. Review and if necessary audit certified payroll records of contractors and subcontracts for compliance with the California Labor Compliance Program. Perform on-site audits if necessary to check for compliance.
- 2.3.4. **Contract Close-Out; Final Payment.** In consultation with the District and the Architect, CM will assist and participate in the review of the General Contractor's application for Final Payment. CM will compile for transmittal to the District the Close-Out documents required by the Contract(s), including Record Drawings, Operations and Maintenance Manuals, test certificates, warranties and guarantees. CM will review and in consultation with the District and the Architect, CM will make recommendations to the District as to Final completion of the Contract and disbursement of the Final Payment.
- 2.3.5. **Project Progress.**
- 2.3.5.1. **Project Schedule.** CM will, in consultation with the District, develop the Project Schedule showing the activities necessary for completion of the Project along with their respective inter-relationships. CM will incorporate the Contractor's separate Construction Schedule into the Project Schedule. During the course of Project construction and based upon Contractor's updated Construction Schedule, CM shall monitor and update the Project Schedule on a regular basis and as may be requested by the District so that the District is kept fully informed at all times of the status and progress of Project construction. Where the actual rate of Project construction progress is behind that indicated by the Project Schedule, CM shall advise and make recommendations to the District for remedial action.
 - 2.3.5.2. **General Contractor's Construction Schedule.** CM shall review Contractor's Construction Schedule(s) and updates thereof, advising the District of compliance with the terms of Contract along with measures appropriate to obtain compliance if necessary.
 - 2.3.5.3. **Coordination of Construction Activities.** CM shall be knowledgeable of activities of the subcontractors and their conformity with the Project Schedule, including the general coordination and sequencing of subcontractor(s) construction activities so that Site space is appropriately allocated.

- 2.3.5.4. **Progress Reports.** CM will maintain records of the progress of construction of the Project, including written progress reports and photographs reflecting the status of Project construction and percentage completion. CM will maintain daily records during Project construction showing weather conditions, subcontractor(s) at the Site and the daily number of tradesmen of every subcontractor at the site, work accomplished, problems encountered and other matters materially affecting the Projection, completion of the Project or Construction Costs.
- 2.3.5.5. **Substantial Completion and Final Completion.** Upon request of the District, CM will in conjunction with the District and the Architect determine when Substantial completion and Final completion have been achieved.
- 2.3.6. **On-Site Observations.**
- 2.3.6.1. **CM On-Site.** During the Construction Phase, **on an as needed basis** (estimate 40 hours per week for the Student Services building) CM shall be on site or have his authorized representative at the Site to observe Site construction activities and to ensure that construction activities under the Contract are accomplished. CM shall maintain at the Site the District's copy of the Contract, Drawings, Specifications, approved Change Orders and Submittals.
- 2.3.6.2. **Construction Quality.** The CM will endeavor to guard the District against defects and deficiencies in construction and workmanship on the basis of its On-Site observations and a quality control program established and implemented hereunder to monitor the workmanship of the General Contractor and subcontractors for conformity with (a) accepted industry standards; (b) applicable laws, codes, regulations, ordinances or rules; and (c) the requirements of the Contract.
- 2.3.6.3. **Rejection of Work.** Whenever in the ordinary course of discharging its services hereunder, CM shall discover or observe patent conditions of defective or deficient construction or workmanship which has or may have an adverse impact upon building life-safety systems or operations, structural elements or integrity or the safety of persons or property, CM shall take prompt action appropriate under the circumstances, including stopping the work and thereupon notifying the District in writing. In other circumstances where defective or deficient work is observed by CM, the District shall be notified in writing and if directed by the District, the CM shall stop or reject such work. CM's responsibilities hereunder shall be limited to defective or deficient work of an apparent and patent nature.
- 2.3.6.4. **Site Safety.** CM shall review safety programs of the General Contractor. By undertaking the obligations hereunder, CM shall not be deemed to have assumed responsibility for the adequacy of sufficiency programs implemented by Trade Contractor(s) nor other responsibility for safety of persons or property at the Site.
- 2.3.7. **Changes and Claims.**
- 2.3.7.1. **Coordination of Changes.** CM will coordinate and disseminate correspondence, drawings and other written materials by and between General Contractor, the District and the Architect relating to Changes to the work. CM will coordinate General Contractor's disposition of Changes and Change Orders to keep the District advised of the status of the same and the actual or potential impact of any particular Change or Change Order or the cumulative effects thereof on Project construction costs or completion.
- 2.3.7.2. **Processing of Changes and Change Orders.** CM will assist the District and the Architect in evaluation of requests by the General Contractor for issuance of Change Orders, assist in negotiations with the General Contractor's proposals relative to Change Orders and the adjustment of Contract Price or Contract Time under the Contract. CM will make recommendations to the District and the Architect for handling and disposition of the General Contractor's proposals relative to Change Orders. If a change to the work is approved or authorized by the District, CM will assist the District and the Architect in the preparation of a Change Order reflecting such approval or authorized change to the Contract.
- 2.3.7.3. **Claims Handling.** CM will assist the Architect in the review, evaluation and processing of claims asserted by the General Contractor. CM will make recommendations to the District as to merit, handling and disposition of the General Contractor's claims.

3. ADDITIONAL SERVICES

- 3.1. **ADDITIONAL SERVICES.** The services described in this Article 3 are not included in the Basic Scope of CM's services hereunder. If the District shall request any of the Additional Services described in this Article 3, CM shall be compensated for the same in accordance with the Agreement.
- 3.2. **Contingent Additional Services.** If Contingent Additional Services described below are provided by CM through no fault or neglect of CM, prior to providing any such Additional Services, CM shall notify the District in writing. Unless the District shall notify CM in writing within five (5) days of CM's notice that such Additional Services shall not be required, CM will proceed to provide such Additional Services and will be compensated for such Additional Services in accordance with the terms of this Agreement. The following constitute Contingent Additional Services:
 - 3.2.1. Services required or necessary as a result of significant changes in the Project scope or other requirements of the Project, including Project size, quality or complexity or material changes to the Project Schedule.
 - 3.2.2. Services required or necessary as a result of the default or termination of the Architect or Contractor, failure of performance of the District or General Contractor, or major defects or deficiencies in the work of a General Contractor.
 - 3.2.3. Services and consultation associated or necessitated by damage to the Project prior to completion by fire or other casualty.
 - 3.2.4. Services in connection with any arbitration or other legal proceeding arising out of the Project, except to the extent that CM is a party to such proceeding.
- 3.3. **Optional Additional Services.** The Optional Additional Services described herein shall be provided by CM only upon the specific written request of the District. Optional Additional Services shall be compensated for in accordance with the terms of this Agreement.
 - 3.3.1. Services relative to future systems, facilities, or equipment not included within the scope of the Project.
 - 3.3.2. Services to investigate existing conditions or facilities or to provide measured drawings thereof.
 - 3.3.3. Services in connection with the District's selection, procurement or installation of furniture, furnishing or equipment not included within the scope of the Project.
 - 3.3.4. Any other service not expressly included within the Basic Scope of Services hereunder.

4. **ARTICLE 4: INSURANCE AND INDEMNITY**

4.1. **CM Insurance.**

- 4.1.1. **Workers Compensation and Employers Liability Insurance.** CM shall purchase and maintain Workers' Compensation Insurance covering claims under workers' or workmen's compensation, disability, benefit and other similar employee benefit acts which may be liable. CM shall purchase 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 CM. The Employer's Liability Insurance required of CM hereunder may be obtained by CM as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained by CM hereunder.
- 4.1.2. **Comprehensive General Liability and Property Insurance.** CM shall purchase and maintain Comprehensive General Liability and Property Insurance as will protect CM from the types of claims set forth below which may arise out of or result from CM's services under this Agreement and for which CM may be legally responsible: (i) claims for damages because of bodily injury, occupational sickness or disease or death of CM's employees; (ii) claims for damages because of bodily injury, sickness or disease or death of any person other than CM's employees; (iii) claims for damages insured by usual personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of such person by CM, or (b) by another person; (iv) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (v) 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 (vi) contractual liability insurance applicable to CM's obligations under this Agreement. District shall be an additional named insured to CM's comprehensive general liability insurance policy.

- 4.1.3. **Professional Liability Insurance.** CM will procure and maintain professional liability Insurance covering claims arising out of the performance of services under this Agreement.
- 4.1.4. **Coverage Amounts.** Insurance to be procured and maintained by CM under this Article 4.0.2 shall be in the coverage amounts set forth in the Agreement.
- 4.1.5. **Policy Endorsements; Evidence of Insurance.** CM 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, whether by endorsement or otherwise, shall provide that such policy will not be modified, cancelled or allowed to expire without at least thirty (30) days advance written notice to the District.
- 4.2. **Builders Risk Insurance.** During the progress of construction of the Project, the District or its General Contractor shall obtain and maintain one or more policies of Builder's Risk Completed Value Insurance covering all insurable work of the Project, including extended coverage and insurance against vandalism and malicious mischief, perils of fire, sprinkler leakage, acts of civil authorities, collapse and flood, to the full insurable value of the work of the Project and coverage for work of the Project whether in progress or completed. The District and CM waive all rights against the other, the Architect, and the General Contractor for damages caused by perils covered by insurance obtained under this provision. The policy(ies) of Builders Risk Insurance shall contain express waivers of subrogation by the insurer(s) issuing such policy(ies) to the extent of damages or losses covered thereunder. If the District requires the General Contractor to obtain a Builders Risk Insurance Policy, such policy will contain such waiver of subrogation.
- 4.3. **District General Liability Insurance.** District shall obtain and maintain General Liability Insurance covering District for claims of bodily injury, death or property damage arising out of the Project.

4.4. Indemnity.

- 4.4.1. **CM Indemnity of District.** To the fullest extent permitted by law, the CM shall indemnify, defend and hold harmless the District and its employees, officers, Trustees, agents and representatives from any and all claims, demands, losses, responsibilities or liabilities for: (a) injury or death of CM's employees arising out of this Agreement; (b) injury or death of persons, damage to property; or (c) 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 negligent of CM, its Sub-Consultants or the employees, agents and representatives of CM 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 District 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.
- 4.4.2. **Contractor's Indemnification.** The District shall cause the Contractor to include specific and express contract provisions whereby each such Contractor agrees to defend, indemnify, and hold harmless the District and CM from all claims arising out of bodily injury (including death) and physical property damages (other than to the work of the Project itself and property covered by insurance under Article 4.4 hereof) that may arise out of the respective operations of such Trade contractors.
- 4.4.3. **District Indemnity of CM.** 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.

5. ARTICLE 5: TERMINATION OR 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 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 Consultant if: (a) 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 (b) 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 Consultant Services, authorized Additional Consultant 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. Consultant shall remain responsible and liable to District for 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 Consultant Services, Reimbursable Expenses or authorized Additional Consultant Services.

- 5.2. **District Right to Suspend.** The District may, in its discretion, suspend all or any part of the Consultant Services hereunder; provided, however, that if the District shall suspend Consultant Services 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 Consultant Services hereunder.
- 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 for the District's convenience and 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 Consultant Services, authorized Additional Consultant Services or allowable Reimbursable Expenses provided or incurred through the effective date of termination plus actual costs incurred by Consultant directly attributable to such 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 Consultant Services.** If the District shall fail to make payment of the Contract Price when due Consultant hereunder, Consultant may, upon seven (7) days advance written notice to the District, suspend further performance of services hereunder until payment in full is received. In such event, Consultant shall have no liability for any delays or additional costs of Project design or construction due to, or arising out of, such suspension.

6. GENERAL

- 6.1. **Marginal Headings: Captions.** The titles of the various Paragraphs of this Agreement and the Articles of these Conditions are for convenience of reference only and are not intended to and in no way shall enlarge or diminish the rights or obligations of CM and the District hereunder.
- 6.2. **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 the District hereunder shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach of default by CM.
- 6.3. **Notices.** Notices CM or District are required or desire to serve on the other shall be valid only if addressed to the other as set forth in the Agreement or modified by notice hereunder from time to time. Notices shall be effective only if by personal delivery requiring signature acknowledging receipt of by United States Mail, Certified, Return Receipt Requested, First Class, postage fully pre-paid.
- 6.4. **Disputes.**
 - 6.4.1. **Continuation of CM Services.** Except in the event of the District's failure to make undisputed payment of the Contract Price due CM, notwithstanding any disputes between the District and CM hereunder, CM shall continue to provide and perform services hereunder pending a subsequent resolution of such disputes.
 - 6.4.2. **Arbitration.** All claims, disputes or other matters in controversy between CM and the District arising out of the Project or this Agreement shall be settled and resolved by binding arbitration conducted under the auspices of the American Arbitration Association's Construction Industry Arbitration Rules in effect at the time of the filing of a Demand for Arbitration. If any claim or dispute is asserted by the Architect or

Contractor or the District relating to the Project and arising in whole or in part out of this Agreement, CM and the District agree that any arbitration proceedings initiated between CM and the District under this Article 5.2 shall be consolidated with any arbitration proceedings initiated in connection with such other claim or dispute with the Architect or General Contractor.

6.5. **Severability.** 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 therefrom, but all remaining provisions will remain and continue in full force and effect.

6.6. **Records.**

6.6.1. **CM Accounting Records.** CM shall maintain complete and accurate records of its personnel engaged in performing any service hereunder, Personnel Expenses, Reimbursable Expenses and other direct costs incurred in connection with performance under this Agreement. Records shall be maintained on the basis of generally accepted accounting principles applied consistently and shall be available for inspection or reproduction by the District upon reasonable request at any time during CM's performance hereunder. Following completion of the Project and the Agreement or the termination of this Agreement, CM shall maintain accounting records for five (5) years or such longer period required by applicable law, code, rule or regulation, during which time such records shall be available to the District or as otherwise required by law, code, rule or regulation for inspection or reproduction.

6.6.2. **Project Records.** Records, documents and other materials generated or received by CM in the course of performing services hereunder may, following completion of the Project or termination of this Agreement, be retained by the District in its sole discretion.

6.7. **Definitions.**

6.7.1. **Architect** is tBP Architecture unless otherwise stated. References to the Architect include the Architect and its consultants retained to prepare or provide any portion of the Design Documents.

6.7.2. **Contract.** Any Contract for Construction awarded by the District for the construction of this Project.

6.7.3. **Design Documents.** The Drawings, Specifications, calculations and other Work Product prepared by the Architect for the Project. Design Documents include surveys, soils reports and other documents prepared for the Project by a licensed Architect or registered Engineer, whether under contract to the Architect or the District.

6.7.4. **General Contractor.** The General Contractor to the District under Contract awarded by the District for the Project.

6.7.5. **Submittals.** Shop Drawings, Product Data or Samples prepared or provided by a Trade Contractor or its Subcontractor supplies illustrating some portion of the Work of the Project.

6.7.6. **Site.** The physical area for construction and related activities of the Project.

ADDENDUM NO. 1

TO AGREEMENT FOR CONSULTANT SERVICES BETWEEN OHLONE COMMUNITY COLLEGE DISTRICT AND Consolidated CM, Inc. Contract Number 264-0806-001

This Addendum No. 1 modifies terms and conditions of the Agreement for Consultant Services (“Agreement”) between **Ohlone Community College District** (“District”) and **Consolidated CM, Inc.** (“Consultant”)

1. Consultant Services. Consultant Services under the Agreement consist of the following:

Construction Management Services for the Ohlone College Student Service Building Project as described in RFP # 264-0806 and General conditions and under the direction of Simon Barros, Director of Facilities.

2. Contract Price. The Contract Price for the Consultant Services shall be based upon the following:

HOURLY BILLINGS WITH MAXIMUM CONTRACT PRICE

The Contract Price for the Consultant Services shall be based upon the personnel hours to provide Consultant Services multiplied by the applicable hourly rate for the Consultant’s personnel set forth in Exhibit A to the Agreement. The foregoing notwithstanding, the District’s payment of the Contract Price for Consultant Services shall not exceed **Seven Hundred Nine Thousand, Fifty Eight Dollars (\$709,058.00)**.

3. Reimbursable Expenses. Allowable Reimbursable Expenses as detailed in Exhibit B shall not exceed **Twelve Thousand, One Hundred Fifty Dollars (\$12,150.00)**.

4. Consultant Deliverables. The Consultant shall provide, as part of the Consultant Services, the following tangible items of Consultant Deliverables: As detailed in RFP# 264-0806. Unless otherwise provided in this Addendum No. 1 or by mutual agreement of the District and the Consultant, concurrently with the Consultant’s delivery of Consultant Deliverables to the District, which are written or graphic in nature, the Consultant shall also provide the District with electronic files of the same.

5. Schedule for Completion of Consultant Services. The Consultant Services shall be performed and completed in accordance with the schedule noted below. The Consultant shall be liable to the District for all consequences of the Consultant’s failure to timely and completely perform Consultant Services.

As per Exhibit A

6. Insurance.

Minimum coverage amounts for policies of insurance to be obtained and maintained by the Consultant and its Sub-Consultants, if any, shall be as follows:

Workers Compensation	In accordance with applicable law
Employers Liability	\$1,000,000.00
Commercial General Liability (including coverage for bodily injury, death, property damage and motor vehicle liability)	
Per Occurrence	\$1,000,000.00
Aggregate	\$2,000,000.00
Professional Liability	
Per Occurrence	\$1,000,000.00
Aggregate	\$2,000,000.00

7. Notices to Consultant.

Notices from the District to the Consultant shall be addressed as follows:

Mr. Matt Scoble, P.E., Executive Vice President

Consolidated CM, Inc.

180 Grand Avenue, Suite 1520

Oakland, CA 94612

8. District Provided Facilities/Services for Consultant. The District will furnish or cause to be furnished for use by the Consultant in performing Consultant Services and authorized Additional Consultant Services the following facilities, services or other items: Plans and Specs. Except for the facilities, services and items identified above, the Consultant shall, without adjustment of the Contract Price hereunder, provide or furnish all other facilities, services and other items necessary for completion of the Consultant Services and authorized Additional Consultant Services.

9. No Other Modification to Agreement. Except as set forth in this Addendum No. 1, no other term, condition or covenant of the Agreement is modified and other terms, conditions and covenants of the Agreement remain in full force and effect.

DISTRICT

Ohlone Community College District

By: _____

Marian Castaneda,

Director of Purchasing,

Contract Administration and Auxiliary Services

Date: _____

CONSULTANT

Consolidated CM, Inc.

By: _____

Name: _____

Title: _____

Date: _____

**Ohlone College
Student Services Building
Construction Management Staffing Plan**

POSITION	2007												2008												Subtotals					
	Pre-con Phase						Pre-Field						Construction Phase												TOTAL	AMOUNT				
	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	HOURS	RATE		
Principal	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	12	12	12	12	12	12	8	8	368	\$124.63	\$45,864	
Construction Manager	40	60	60	60	60	60	60	60	60	60	60	60	60	60	60	60	60	60	60	60	60	60	60	60	60	80	3,480	\$118.63	\$412,832	
Constructability Review	160	0	40	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	200	\$120.63	\$24,126		
ICR (not in Scope)	0	0	0	0	40	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	40	\$0.00	\$0		
Scheduler	48	48	16	0	0	40	32	24	16	16	16	16	16	16	16	16	16	16	16	16	16	16	16	8	8	436	\$108.63	\$47,363		
Administrative Support	40	40	40	40	40	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	80	\$49.63	\$174,698		
Subtotal- Includes IOR Hours																												11,284		\$704,883
ODC Allowance-see spreadsheet for breakdown																														\$12,150
Total with OCIP Savings																														\$717,033
Owner Controlled Insurance Savings																														\$4,175
Total without OCIP Program																												11,284	0.37	\$721,208

Notes:

- This budget is based on the currently anticipated need for 25 months of construction management support, 5 months of pre-construction assistance, 18 months in the field and 2 months of post-construction close-out and occupancy related activities. The 25 month schedule of services has been revised based on the Campus/HP meeting held on Campus 9/13/06 and reflects the current Project Timeline. **Note: Pre-construction services have been revised to include a constructability review, creation of a pre-construction schedule, a pre-qualification of contractors and miscellaneous support.**
- OCIP savings for Consolidated CM for Workman's Comp Insurance is at the rate of \$0.883 per \$100 of salary paid. This computes to a \$0.37 per hour savings for each hour worked. There is no savings to CCM for General Liability under an OCIP. Typically CM Workman's Comp rates are low, so OCIP savings is low. General Contractor Workman's Comp rates are in the range of \$24-\$30 per \$100, the GC Workers Comp savings is consequently substantial on a major project and that savings would be the reason to create an OCIP, not the minor savings on the construction manager.
- We have based the rates on the CCM 2006 Rates minus OCIP savings. All prevailing wage inspection positions are at the straight time rate. Off-hours work, if any, will be subject to a multiplier which could vary as a function of the duration of the off-hours work. CCM adjusts billing rates once a year based on the published consumer price index.
- Other Direct Cost Allowance (ODC) is for such items as Office Supplies, Copying, Fed EX, Travel, Per Diem, etc. ODC's are billed at actual cost. Mileage to be billed per IRS guidelines.
- Expenses for Office space (or trailer), telephones, copier, fax, computers and software to be covered by Contractor.
- During the Pre-Field period, the Contractor will be submitting, RFIs, submittals, schedules, meeting with the CM/Campus and in general getting the planning and time critical long lead items underway. Field work will not begin until May, but should move more quickly because of the pre-field period work. We consequently believe the project can be completed by September 2008 which is a net one month less in the field. Minimizing the overall impact to the campus.

Student Services Building Additional Services

Rate Schedule for: Consolidated CM, Inc. (CCM)

Costs for additional services requested by District will be compensated at the rates provided below.

Fees per individual:

A. Principal-In-Charge	\$ 125.00 (No OCIP Disc.)	per hour
B. Construction Manager	\$ 119.00 " " "	per hour
C. Clerical	\$ 50.00 " " "	per hour
D. Other: <u>Constructability Review</u> *	\$ 121.00 " " "	per hour
E. Other: <u>Scheduler</u> *	\$ 109.00 " " "	per hour
F. Other: <u>Inspector of Record (As Needed)</u> *	\$ 85.00 " " "	per hour

* Identify title

“Other” Renovations & Repairs Projects

Rate Schedule for: Consolidated CM, Inc. (CCM)

Costs for additional services requested by District will be compensated at the rates provided below.

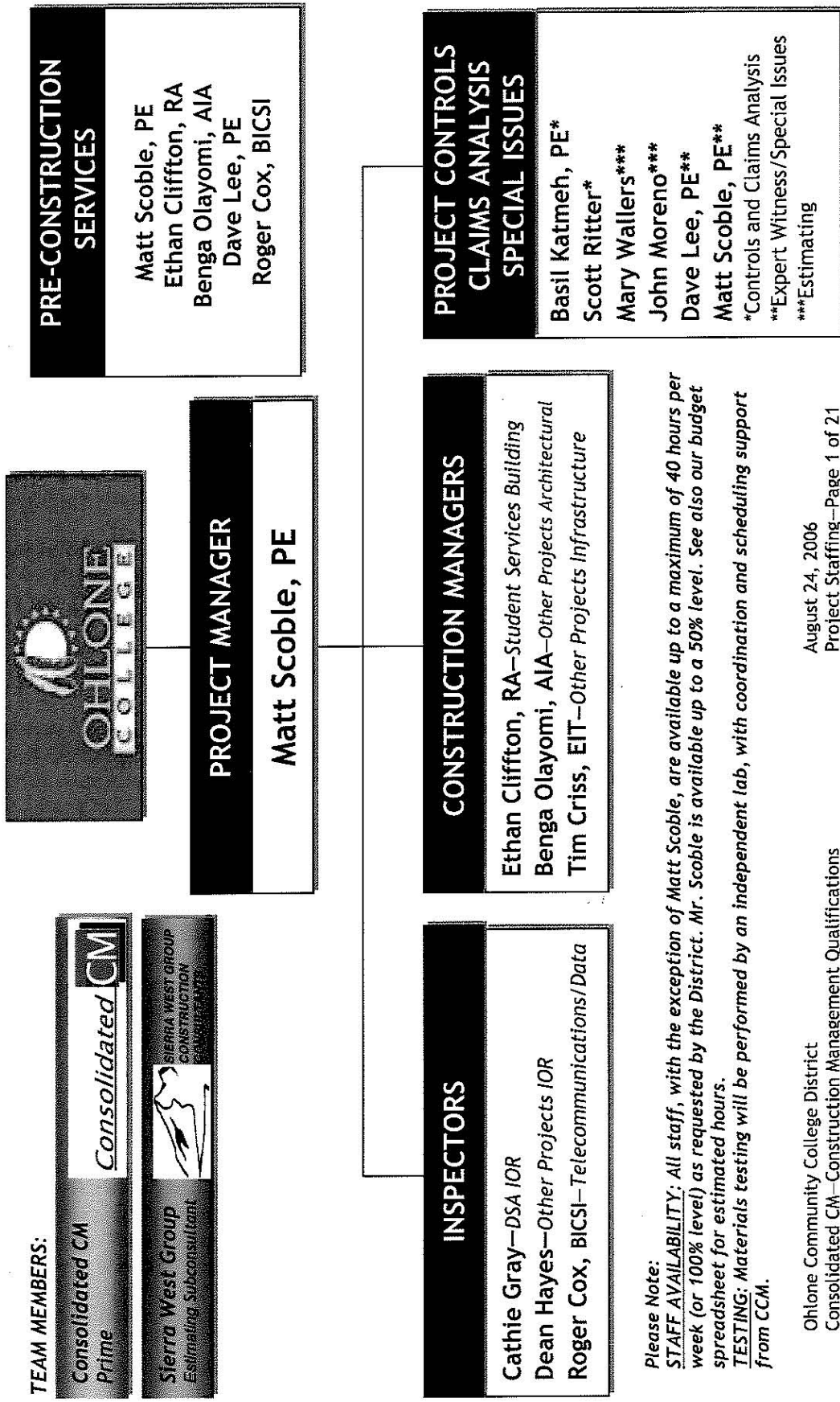
Fees per individual:

A. Principal-In-Charge	\$ 125.00 (No OCIP Disc.)	per hour
B. Construction Manager	\$ 119.00 " " "	per hour
C. Clerical	\$ 50.00 " " "	per hour
D. Other: <u>Constructability Reviewers</u> *	\$ 121.00 " " "	per hour
E. Other: <u>Scheduler</u> *	\$ 109.00 " " "	per hour
F. Other: <u>Inspector of Record (As Needed)</u> *	\$ 85.00 " " "	per hour

* Identify title



PROPOSED STAFF Organization Chart



TEAM MEMBERS:

Consolidated CM Prime

Sierra West Group Estimating Subconsultant

INSPECTORS

Cathie Gray—DSA IOR
Dean Hayes—Other Projects IOR
Roger Cox, BICSI—Telecommunications/Data

CONSTRUCTION MANAGERS

Ethan Cliffton, RA—Student Services Building
Benga Olayomi, AIA—Other Projects Architectural
Tim Criss, EIT—Other Projects Infrastructure

PRE-CONSTRUCTION SERVICES

Matt Scoble, PE
Ethan Cliffton, RA
Benga Olayomi, AIA
Dave Lee, PE
Roger Cox, BICSI

PROJECT CONTROLS CLAIMS ANALYSIS SPECIAL ISSUES

Basil Katmeh, PE*
Scott Ritter*
Mary Wallers***
John Moreno***
Dave Lee, PE**
Matt Scoble, PE**
*Controls and Claims Analysis
**Expert Witness/Special Issues
***Estimating

Please Note:
STAFF AVAILABILITY: All staff, with the exception of Matt Scoble, are available up to a maximum of 40 hours per week (or 100% level) as requested by the District. Mr. Scoble is available up to a 50% level. See also our budget spreadsheet for estimated hours.
TESTING: Materials testing will be performed by an independent lab, with coordination and scheduling support from CCM.