



ADDENDUM #2
RFQ-204-22 Construction Management – Agency Services

As per the directions in the RFQ package, the following question was submitted for clarification in accordance with section VII: Errors/Discrepancies/Questions/Clarifications of RFQ:

NEW CLOSING DATE:

The District has extended the due date for this RFQ from Wednesday, May 25, 2022 to **Tuesday, May 31, 2022, no later than 3:00PM**

Note:

Please mail the electronic copy of your Firm’s submittal via Thumb drive with a postmark no later than May 31, 2022

ADDITIONAL DOCUMENTS

- Insurance Requirements
- Sample Agreement

REQUESTS FOR INFORMATION - QUESTIONS AND RESPONSES

(1) QUESTION: Requests for clarification to District regarding insurance:

- a) In Section E (Insurance): The RFQ states that the Workers Compensation Insurance should meet the minimum requirements of the State of California (which is typically \$1,000,000 per occurrence). Then in Section X (Minimum Qualification Criteria), Item 7 states that the insurance requirements should not be less than \$2,000,000 per occurrence for Workers Compensation. Will the District accept a Workers Compensation policy of \$1,000,000 per occurrence per the State of California minimum requirement?

RESPONSE: Yes, It exceeds the District minimum requirements for Workers’ Compensation (Please see attached District Insurance Requirements, Item 4).

- b) In Section E (Insurance) Will the District accept Professional Liability policy carrying \$2,000,000 each occurrence/\$2,000,000 annual aggregate which is more customary for a construction management consultant contract?

RESPONSE: Yes, It meets the District requirements for Professional Liability (Please see attached District Insurance Requirements, Item 3).

(2) QUESTION: Page 2, Paragraph 4 states “All qualified firms and persons shall have current license as required to complete the inspection services”. Are inspection services to be provided under this contract or shall this be removed?

RESPONSE: Inspection services are not required under the CM Agency scope of work and therefore the statement “All qualified firms and persons shall have current license as required to complete inspection services” is deleted from page 2, Paragraph 4 of the RFP.

- (3) QUESTION: Page 4, Section II, Paragraph 4 states "All qualified firms and persons shall have current licenses as required by the state of California." Please clarify the type of license the District will consider for qualification. IE – general contractor's license

RESPONSE: The firm shall have all State required business licenses and a senior company executive should have either a Professional Engineer (PE), Architecture or General Contractor's license from the State of California.

- (4) QUESTION: Section 5 (Relevant Staffing): Please clarify the minimum years of experience. Is it 5 years or 10 years?

RESPONSE: Staff minimum years of experience managing educational projects shall be 5 years.

- (5) QUESTION: RFP Submittal, Item C (References): Would the District consider projects that are substantially completed as relevant examples of educational construction projects?

RESPONSE: Yes, the District will consider projects that are substantially complete as relevant with the stipulation that "Substantially Complete is defined as Furniture, Fixtures and Equipment have begun to be installed inside the project and the time of the RFP submittal."

- (6) QUESTION: RFP Submittal Item C (References), #4: Since this request for program manager references may present a conflict with competing firms applying for this contract, would the district consider removing this requirement?

RESPONSE: The District will not waive the requirement but would ask that the project Owner's contact information be provided as well for those projects as the concern is noted and understood.

- (7) QUESTION: RFP Submittal Item E & H.A. (Insurance): Section E requests information on our insurance policy and Section H, Item A. also includes Insurance & Financial Responsibility Requirements. Where would the District like us to provide our insurance documentation?

RESPONSE: Please submit under section E.

- (8) QUESTION: In Section E (Insurance): Will the District accept a Professional Liability policy carrying \$2,000,000 each occurrence/\$2,000,000 annual aggregate which is more customary for a construction management consultant contract? Attachment A (Insurance and Financial Responsibility Requirements), Under Comprehensive General Liability: the RFP states that the automobile limits shall be a minimum of \$1,000,000 per occurrence, with aggregate of \$3,000,000 per policy per year. Would the District accept \$1,000,000 per occurrence and \$1,000,000 aggregate?

RESPONSE: Yes, It meets the District requirements for Commercial Auto Liability (Please see attached District Insurance Requirements, Item 2).

- (9) QUESTION: If the firm submitting is involved with the design of these projects, are we still allowed to bid on the CM RFQ or would that be considered a conflict of interest? We do have a dedicated CM group that is not involved with the project's design.

RESPONSE: If a CM Agency firm is selected and awarded a project that will have a CM at Risk RFP/selection process (i.e. the Fallbrook 40 project) the CM Agency firm would be NOT be allowed to propose for the CM at Risk services as it would be a conflict of interest. The CM Agency form would be able to propose on the CM at Risk LL Building Student Retention

Center project as the CM Agency firm's selection will happen after the CM@Risk firm is selected.

The information above is added to RFQ #204-22

Date Issued: May 24, 2022

Richard J Taylor

Richard J Taylor (May 24, 2022 16:42 PDT)

Richard Taylor, Interim Director Business Services
Finance and Administrative Services



INSURANCE REQUIREMENTS

Contractor shall submit an insurance certificate evidencing the following coverages:

1. **Commercial General Liability**

The vendor shall carry general public liability insurance covering all duties, services, or work performed under the contract.

- Per Occurrence or claim \$2,000,000
- Products/Completed Operations Aggregate \$2,000,000
- Personal and Advertising Injury \$1,000,000
- General Aggregate \$4,000,000

2. **Business Auto Liability** – specific cases only

Business Auto Liability is required when a vendor is operating a vehicle on Palomar premises for purposes other than commuting.

- Bodily Injury \$1,000,000 (CSL)
- Property Damage \$1,000,000 (CSL)

3. **Professional Liability** – specific cases only

- Per Occurrence or claim \$2,000,000
- Aggregate \$2,000,000

Professional Liability policies are designed to cover errors and omissions and the failure to render professional services. Therefore Professional Liability is appropriate for actuals, architects, engineers, physicians, lawyers, environmental consultants, and other professionals.

4. **Workers' Compensation** as required by California State Law

Worker's Compensation is required if a supplier has any employees. If a supplier does not have any employees then the supplier is exempt from this requirement.

- Part A – Statutory
- Part B - \$500,000 In the aggregate
\$500,000 Each Person
\$500,000 Each person for occupational disease.

5. **Cyber Liability Insurance** – specific cases only

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations,

information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

- Per Occurrence or claim \$2,000,000
- Aggregate \$2,000,000

6. Sexual Abuse and Molestation Coverage – for specific cases if vendor/contractor will have contact with minors.

7. Endorsements

The following endorsements and other stated information are required on the original certificate of insurance:

- Primary/Non-contributory endorsement in favor of Palomar Community College District (PCCD) for the Commercial General Liability and Business Auto Liability coverage.
- 30 days' Notice of Cancellation.
- PCCD be named Additional insured on all policies except Worker's Compensation.
- Waiver of Subrogation on all policies.

8. Submission of Certificate of Insurance & Copy of Policy

When issuing a certificate pay careful attention to the policy expiration date. The buyer should ensure that:

- The insurance does not expire before the end of the contract term. If it does the buyer will request a new certificate before the expiration date.
- If the contract is extended, the buyer will ask that the certificate be current. In some cases, coverage must continue for three years beyond the termination of the contract.
- The PCCD retains certificates for at least 3 years after the conclusion of the business for which the certificate was obtained.
- The original certificate of insurance, indicating the coverage and limits stated herein, with copies of all endorsements, shall be furnished to Palomar Community College District within 14 business days after receipt of a written purchase order or some other duly executed contractual document.
- Mail the original certificate of insurance to: Palomar Community College District, Attn: Contracts & Services, 1140 West Mission Road, San Marcos, California 92069 **or** email Contracts@palomar.edu.

Upon request of PCCD, the Contractor shall be required to provide copies of all policies required under the contract to PCCD. Lastly, the District reserves the right to modify any and all insurance requirements based on the nature of the risk.

CERTIFICATE OF LIABILITY INSURANCE REFERENCE

This is a road map of explanations for the Certificate sample that follows.

ACORD 25 – Liability Insurance

CERTIFICATE OF LIABILITY INSURANCE		DATE (MMDD/YYYY)				
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.						
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ices) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).						
PRODUCER	CONTACT NAME: _____ PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____					
INSURED	INSURER(S) AFFORDING COVERAGE NAIC # INSURER A: _____ INSURER B: _____ INSURER C: _____ INSURER D: _____ INSURER E: _____ INSURER F: _____					
1	2					
COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:						
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MMDD/YYYY)	POLICY EXP (MMDD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE 3 OCCUR					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea. occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 7 GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	GENL AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY 5 PRO-JECT <input type="checkbox"/> LOC OTHER:	4 5		6		COMBINED SINGLE LIMIT (Ea. accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ 9 PROPERTY DAMAGE (Per accident) \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO 8 <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	4 5		6		EACH OCCURRENCE \$ AGGREGATE \$
	10 UMBRELLA L I AB EXCESS L I AB 11 OCCUR CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$	4 5		6		PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E. L. EACH ACCIDENT \$ 12 E. L. DISEASE - EA EMPLOYEE \$ E. L. DISEASE - POLICY LIMIT \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	5		6		
	13			6		
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)						
14 Attachments: Additional Insured / Waiver of Subrogation Primary, Non-contributory / Cancellation						
CERTIFICATE HOLDER				CANCELLATION		
15				SHOULD ANY OF THE ABOVE-DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.		
				AUTHORIZED REPRESENTATIVE		

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ACORD 25 (2016/03)

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1. Verify that the Named Insured matches the contract (your business partner).

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") dated *(enter date after board approval)* is entered into by and between the **Palomar Community College District** ("District"), and *(enter awarded Firm Legal Name)*, ("Firm"), collectively referred to as the "Parties." This Agreement is made and entered into with reference to the following recitals, each of which is incorporated into this Agreement.

RECITALS

- (A) WHEREAS, on November 7, 2006, the voters within the District's jurisdictional boundaries approved that certain general obligation bond Measure M in the amount of \$694,000,000 (the "Bond"). The purpose of the Bond is to allow the District to, among other things, repair and upgrade aging educational facilities, acquire sites and construct new education facilities (the "Project"); and
- (B) WHEREAS, on April 26, 2022, the District issued a Request for Qualifications (RFQ #204-22) seeking highly qualified firms to provide Construction Management – Agency (CM-Agency) services to assist the District with its construction of the Fallbrook, LL Remodel and Athletics Complex projects. In addition to the quality and resources of the firm, the District is interested in augmenting its staff with extraordinarily qualified individuals from the firm whose experience are commensurate with the needs of the project. The CM-Agency firm selected will act as District staff augmentation to assist the District in oversight of the projects.
- (C) WHEREAS, Firm responded to the RFQ and *was invited to participate in interviews conducted by District; and*
- (D) WHEREAS, the governing board of the District has determined that the Firm has demonstrated competence and has the professional qualifications necessary for the satisfactory performance of the services required for the Project; and
- (E) WHEREAS, on *(enter date of award)*, the District's governing board approved the selection of Firm to provide services for the Project,
- (F) WHEREAS, the Firm understands and acknowledges the types of services that are anticipated to be delivered through this Agreement as described in Exhibit "A" RFQ 204-22, attached hereto and incorporated herein by this reference; and
- (G) WHEREAS, Firm represents that it is not currently performing work on other existing Proposition M Projects and that no conflict of interest exists in entering into this Agreement; and
- (H) WHEREAS, Firm represents that it is competent to undertake the services necessary to perform the scope of service by virtue of the experience, training, education, and expertise of its principals and employees, that it is willing to accept responsibility for performing such scope of services in accordance with the terms and conditions set forth in this Agreement, and that it is familiar with the requirements of the California Education, Government, and the Public Contract Codes as applicable to performing services under this Agreement

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, District and Firm agree as follows:

AGREEMENT

I. FIRM'S SERVICES.

- 1.1. Firm shall perform the services identified in the RFQ basis on projects assigned to Firm by the District. District shall have the right to request, in writing, changes in the Scope of Services ("Changes"). All Changes shall be incorporated by written amendment to this Agreement which shall describe the Changes, set forth the increase or decrease in compensation, if any, and the anticipated time to complete the Changes.
- 1.2. Firm shall perform all work to the generally accepted professional standards of Firm's profession in the San Diego area and in a manner reasonably satisfactory to District. Firm shall comply with all applicable federal, state, and local laws and regulations, including but not limited to, the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 1.3. During the term of this Agreement, Firm shall not perform any work for another person or entity for whom Firm was not working at the Commencement Date if (i) such work would require Firm to abstain from a

decision under this Agreement pursuant to a conflict of interest statute; and (ii) District has not consented in writing to Firm's performance of such work.

- 1.4 Firm represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Firm or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. shall be Firm's project administrator and shall have direct responsibility for management of Firm's performance under this Agreement. No change shall be made in Firm's project administrator without District's prior written consent.
- 1.5 Firm agrees to house its staff performing services under this Agreement in close proximity to the District and/or Project site so that Firm's staff may act as an extension of District staff ???in performing services pursuant to this Agreement.

2. COMPENSATION.

- 2.1. District agrees to compensate Firm for the services provided under this Agreement, and Firm agrees to accept payment in accordance with the [Approved Fee Schedule; as fully described in Exhibit B](#), attached hereto and incorporated herein by this reference, in full satisfaction for such services, provided however, that in no event shall the total compensation and costs payable to Firm under this Agreement exceed the agreed upon sum, unless specifically approved in advance and in writing by District as provided herein.
- 2.2. Firm shall submit to District an invoice, on a monthly basis for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within ten (10) business days of receipt of each invoice, District shall notify Firm in writing of any disputed amounts included on the invoice. Within thirty (30) calendar days of receipt of each invoice, District shall pay all undisputed amounts included on the invoice. District shall not withhold applicable truces or other authorized deductions from payments made to Firm.
- 2.3. Subject to Section I.I, payments for Changes shall be made to Firm by District on a time- and-materials basis using Firm's standard fee schedule.

3. OWNERSHIP OF WRITTEN PRODUCTS.

All reports, documents, or other written material ("written products") developed by Firm in the performance of this Agreement shall be and remain the property of District without restriction or limitation upon its use or dissemination by District. Firm may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Firm.

4. RELATIONSHIP OF PARTIES.

Firm is, and shall at all times remain as to District, a wholly independent contractor. Firm shall have no power to incur any debt, obligation, or liability on behalf of District or otherwise to act on behalf of District as an agent. Neither District nor any of its agents shall have control over the conduct of Firm or any of Firm's employees, except as set forth in this Agreement. Firm shall not represent that it is, or that any of its agents or employees are, in any manner employees of District.

5. INDEMNIFICATION.

- 5.1 The parties agree that District, its officers and employees shall, to the fullest extent permitted by law, be held harmless from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement to the extent caused by the negligent acts, errors, or omissions of Firm. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the District with the fullest protection possible under the law. Firm acknowledges that District would not enter into this Agreement in the absence of Firm's commitment to indemnify and protect District as set forth herein.
- 5.2 To the fullest extent permitted by law, Firm shall defend, indemnify and hold harmless District, its officers, employees, agents, consultants, and volunteers from and against any and all losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any reckless, negligent, or otherwise wrongful acts, errors or omissions of Firm or any of its officers, employees, servants, agents, or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of District's choice.
- 5.3. District shall have the right to offset against the amount of any compensation due Firm under this Agreement any amount due District from Firm as a result of Firm's failure promptly to District any indemnification arising under this Section 5 and related to Firm's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

- 5.4. The obligations of Firm under this Section 5 will not be limited by the provisions of any workers' compensation act or similar act. Firm expressly waives its statutory immunity under such statutes or laws as to District, its officers, agents, employees and volunteers.
- 5.5. Firm agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Section 5 from each and every subcontractor or any other person or entity involved by, for, with, or on behalf of Firm in the performance of this Agreement. In the event Firm fails to obtain such indemnity obligations, Firm agrees to be fully responsible and indemnify and hold harmless District, its officers, employees, agents, consultants, and volunteers from and against any and all losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any reckless, negligent, or otherwise wrongful acts, errors or omissions of Firm's subcontractors or any other person or entity involved by, for, with, or on behalf of Firm in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of District's choice.
- 5.6. District does not, and shall not waive any rights that it may possess against Firm because of the acceptance by District, or the deposit with District, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

6. INSURANCE.

- 6.1. During the term of this Agreement, Firm shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise out of or in connection with Firm's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
 - 6.1.1 Comprehensive General Liability Insurance with coverage limits of not less than Two Million Dollars (\$2,000,000) per occurrence, Four Million Dollars (\$4,000,000) General Aggregate including products and completed operations, contractual insurance, broad form property damage, independent Firms, personal injury, underground hazard, and explosion and collapse hazard where applicable.
 - 6.1.1. Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per accident for bodily injury and property damage for all owned, hired and non-owned automobiles.
 - 6.1.2. Worker's Compensation insurance as required by the laws of the State of California and include Employer's Liability with limits not less than \$1,000,000 each accident; \$1,000,000 policy limit bodily injury by disease; \$1,000,000 each employee bodily injury by accident.
 - 6.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than Two Million Dollars (\$2,000,000) per Occurrence; Two Million Dollars (\$2,000,000) Aggregate.
 - 6.1.5 Cyber Liability Insurance with limits not less than \$1,000,000 for each occurrence or event with an annual aggregate of \$1,000,000.
- 6.2 Firm shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 6.3 The policy or policies required by this Agreement shall be issued by an insurer that is either admitted in the State of California or on the California Department of Insurance approved list of non-admitted insurers. All insurance companies shall have and maintain a minimum A.M. Best rating of A; VIII.
- 6.4 Firm agrees that if it does not keep the aforesaid insurance in full force and effect, District may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay, at Firm's expense, the premium thereon.
- 6.5 At all times during the term of this Agreement, Firm shall maintain on file with District's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the District and its officers, employees, agents and volunteers as additional insureds. Firm shall, prior to commencement of work under this Agreement, file with District's Risk Manager such certificate(s).
- 6.6 Firm shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.

- 6.7 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming the District and its officers, employees, agents, volunteers as additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to District. Firm agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 6.8 The insurance provided by Firm shall be primary to any coverage available to District. All insurance shall include a Primary and Non-contributory endorsement in favor of the District. Any insurance or self-insurance maintained by District and/or its officers, employees, agents or volunteers, shall be in excess of Firm's insurance and shall not contribute with it.
- 6.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Firm, and Firm's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Firm hereby waives all rights of subrogation against the District. All insurance shall include a Waiver of Subrogation endorsement in favor of the District.
- 6.10 Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of District, Firm shall either reduce or eliminate the deductibles or self-insured retentions with respect to District, or Firm shall procure a bond guaranteeing payment of losses and expenses.
- 6.11 Procurement of insurance by Firm shall not be construed as a limitation of Firm's liability or as full performance of Firm's duties to indemnify, hold harmless and defend under Section 5 of this Agreement.
- 7. **MUTUAL COOPERATION.**
 - 7.1 District shall provide Firm with all pertinent data, documents, and other requested information as is reasonably available for the proper performance of Firm's services under this Agreement.
 - 7.2 In the event any claim or action is brought against District relating to Firm's performance in connection with this Agreement, Firm shall render any reasonable assistance that District may require.
- 8. **RECORDS AND INSPECTIONS.**
 - 8.1 Firm shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after expiration or termination of this Agreement. District shall have the right to access and examine such records, without charge, during normal business hours. District shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.
 - 8.2 All data, documents, discussions, or other information developed or received by Firm or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Firm without prior written consent of District. District shall grant such consent if disclosure is legally required. Upon request, all District data shall be returned to District upon the termination or expiration of this Agreement.
- 9. **PERMITS AND APPROVALS.** Firm shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary in the performance of this Agreement. This includes, but shall not be limited to, safety permits and inspections.
- 10. **NOTICES.** Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Firm's and District's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to District:
Attention Contract Services
Palomar Community College District
1140 W. Mission Road
San Marcos, CA 92069-2487
Email: contracts@palomar.edu
Telephone: 760-744-1150, ext. 2129
Facsimile: 760-761-3548

If to Firm:
Attention: _____

Email: _____
Telephone: _____
Facsimile: _____

11. SURVIVING COVENANTS. The Parties agree that the covenants contained in Sections 5, 7, 8, and 12 of this Agreement shall survive the expiration or termination of this Agreement.

12. TERM AND TERMINATION.

12.1 The firm shall perform services for Project(s) requested by the District based on the year to year term of this Agreement for a total period of up to five (5) calendar years, effective _____.

12.2 Either Firm or District may terminate this Agreement upon five (5) days advance written notice to the other if the other party is in default in performance of a material obligation hereunder and such default is not caused by the party initiating the termination. Such termination shall be effective the fifth (5th) day following the date of the written termination notice. In addition to the District's right to terminate this Agreement for Firm's default, the District may terminate this Agreement if: (i) firm becomes bankrupt or insolvent, including the filing of a general assignment for the benefit of creditors; or (ii) if Firm disregards applicable laws, codes, ordinances, rules or regulations. If the District exercises the right of termination hereunder, the amount due Firm shall be based upon Scope of Services and authorized Changes completed by Firm as of the effective date of termination, reduced by damages, losses, costs or other expenses incurred or sustained by the District as a result of Firm's default.

12.3 The District may, at any time, upon thirty (30) day advanced written notice to Firm, terminate this Agreement for the District's convenience. If the District elects to terminate for convenience, within thirty (30) days following the effective date of such termination for convenience, the District will make payment to Firm for the Basic Services and authorized Changes provided prior to the effective date of the termination for convenience.

12.4 The District may, in its discretion, suspend all or a part of the Scope of Services for such duration as determined solely by District. If the period of suspension directed by the District exceeds sixty (60) or more consecutive calendar days and such suspension is not caused in whole or in part by the neglect or fault of the Firm or any District approved Sub-Firm or Firm's breach of this Agreement, upon assumption of the Scope of Services, the Contract Price shall be subject to adjustment to reflect actual costs and expenses incurred by the Firm as a direct and sole result of the suspension directed by the District.

12.5 In the event of a dispute between the Firm and the District, Firm agrees that it will not stop work under this Agreement pending the resolution of any such dispute.

13. GENERAL PROVISIONS.

13.1 Firm shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without the District's prior written consent, and any attempt to do so shall be void and of no effect. District shall not be obligated or liable under this Agreement to any party other than Firm.

13.2 In the performance of this Agreement, Firm shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual expression or orientation, national origin, ancestry, age, physical or mental disability or medical condition.

13.3 The captions appearing at the commencement of the sections and in any paragraph within the sections of this Agreement, are descriptive only and for convenience only. Should a conflict arise as a result of such headings, the language of the section or paragraph and not the heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neutral form and visa versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).

13.4 The waiver by District or Firm of any breach of any term, covenant, or condition of this Agreement shall not be deemed to be a waiver of such term, covenant, or condition. No term, covenant, or condition of this Agreement shall be deemed to have been waived by District or Firm unless in writing.

13.5 Firm shall not be liable for any failure to perform if Firm presents acceptable evidence, in District's sole judgement, that such failure was due to causes beyond the control and without the fault or negligence of Firm.

13.6 Each right, power, and remedy provided for in this Agreement now or hereafter existing at law, in equity, by statute, or otherwise, shall be cumulative and in addition to every other such right, power, or remedy. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers, or remedies. In the event legal action shall be necessary to enforce any term, covenant, or condition contained in this Agreement, the part prevailing in such action, whether reduced to judgement or not, shall be entitled to its reasonable court costs, but neither party shall be entitled to attorneys' fees expended in such action. The venue

for any litigation shall be in the North County Jurisdiction of San Diego County, California.

- 13.7 If any term or provision of this Agreement or its application to any person or circumstance is deemed to be invalid or unenforceable, then such term or provision shall be amended solely to the extent necessary to cure such invalidity or unenforceability. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 13.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 13.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.
- 13.10 Time is of the essence in this Agreement. The time for performance of any obligation hereunder by either party shall be extended only if performance of the obligation is delayed or prevented by the conduct of the other Party, acts of God, labor disturbances or other events outside the control of the Parties.
- 13.11 This instrument contains the entire Agreement between the District and Firm with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the Parties. Amendments to or deviations from this Agreement shall be effective and binding only if made in writing and executed by District and Firm.

TO EFFECTUATE THIS AGREEMENT, the Parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

PALOMAR COMMUNITY COLLEGE DISTRICT

AWARDED FIRM

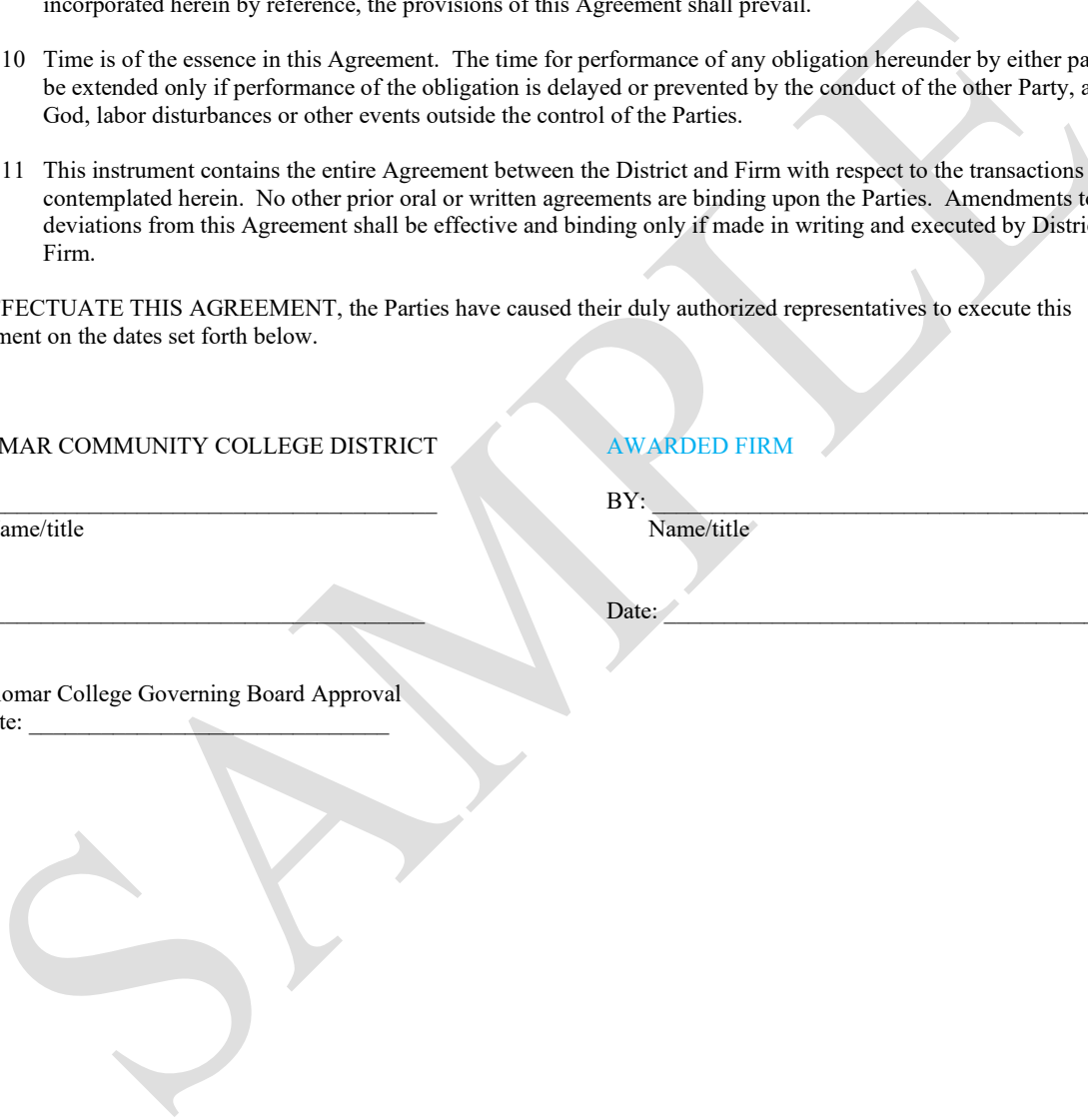
BY: _____
Name/title

BY: _____
Name/title

Date: _____

Date: _____

Palomar College Governing Board Approval
Date: _____








Addendum #2 - RFQ 204-22 CM Agency Services w-sample agree

Final Audit Report

2022-05-24

Created:	2022-05-24
By:	Debbi Claypool (dclaypool@palomar.edu)
Status:	Signed
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