

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE IRONHOUSE SANITARY DISTRICT AND
CONSTRUCTION MANAGER**

This Professional Services Agreement (the "**Agreement**") is dated____, 2020 and is by and between the Ironhouse Sanitary District, a political subdivision of the State of California ("**District**") and _____, a California Corporation, licensed to do business in California, ("**Construction Manager**", "**CM**", or "**Consultant**") relating to Construction Management Services ("**Services**").

Recitals

WHEREAS, District wishes to retain CM to provide construction management and related services;

WHEREAS, CM was selected by means of District's consultant selection process, and represents that they possess all necessary training, licenses and permits to perform the services required by District as set forth in this Agreement, and that their performance of such services will conform to the standard of practice consistent with a professional construction management firm having experience and expertise in performing professional services of like nature and complexity working on similar, successfully completed projects;

WHEREAS, Government Code section 53060 permit the District Board to enter into agreements for professional temporary services with individuals specially trained and experienced and competent to perform those services; and

WHEREAS, the services proposed in this Agreement are professional and temporary in nature.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, stipulated and agreed, the parties agree as follows:

AGREEMENT

1. Definitions

1.1 Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

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| "Agreement" | This Agreement consists of this Agreement, together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, <u>Appendix A</u> (Services to be Provided by CM), <u>Appendix B</u> (Payments to CM), <u>Appendix C</u> (Projects and Schedule), <u>Appendix D</u> (Deliverables), <u>Appendix E</u> (Insurance), and <u>Appendix F</u> (Key Personnel), attached hereto. |
| "Construction Manager" | [_____] |
| "District" | Ironhouse Sanitary District |
| "Project" | Ironhouse Sanitary District's Old Town Pipeline Improvement Project, Project No. ISD-19-02 |

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| "Services" | All work, labor, materials and services required under the terms and conditions of this Agreement, provided pursuant to the terms and conditions of this Agreement, including without limitation architectural, engineering, building information modeling, coordination, construction management, and administrative services. Services that may be required, dependent on Project needs, are further described in Appendix A, Services, Appendix C, Projects and Schedule, and Appendix D, Deliverables. |
| "Subconsultants" | Construction Manager's consultants, subconsultants, contractors and subcontractors, of any tier. |

2. Term of Agreement

- 2.1 This Agreement is for a period of approximately 1 year(s), beginning with the execution of the Agreement and concluding _____ unless it is extended in accordance with paragraph 2.2 below.
- 2.2 This Agreement may be extended by mutual agreement of the parties hereto. Any extension shall be in written form, signed by both parties, and shall specify the length of the extension and compensation.

3. Services CM Agree to Perform

- 3.1 _____, on behalf of CM, shall perform all Services described in Appendix A, Services to be Provided by CM, and provide all Deliverables described in Appendix D, Deliverables attached hereto and incorporated by reference as though fully set forth herein,
- 3.2 CM may recover compensation for extended services as set forth in Appendix B.
- 3.3 Should the progress of the Services under this Agreement at any time fall behind schedule for any reason other than Excusable Delays, CM shall apply such additional manpower and resources as necessary without Additional Services Compensation to bring progress of the Services under this Agreement back on schedule and consistent with the standard of professional skill and care required by this Agreement. Time is of the essence in the performance of this Agreement.

4. Compensation

- 4.1 District shall pay Construction Manager compensation according to the process established in Appendix B "Payments to CM".
- 4.2 District shall not incur any charges under this Agreement, nor shall any payments become due to Construction Manager for any payment period on the Project, until District receives all deliverables required under Appendix D, Deliverables, for the payment period (if any) and reasonably accepts such deliverables as meeting the requirements of this Agreement. In cases where Construction Manager has partially completed one or more deliverables due during a payment period, and if Construction Manager demonstrates diligent progress thereon, then District may make a partial progress payment based upon percentage completion of the partially completed deliverables and diligent progress but taking into account any adverse impacts upon District. District shall not be liable for, and CM shall not be entitled to, any payment for Services performed before this Agreement's execution.
- 4.3 District will not withhold entire payment if a questioned amount is involved, but will issue payment in the amount of the total invoice less any questioned amount(s). District will make payment for questioned amounts(s) upon District's receipt of any requested documentation verifying the claimed amount(s) and District's determination that the amount is due under the terms of this Agreement.

District shall advise CM, in writing, within 15 calendar days of receipt of the requested documentation. Final payment will be made when all Services required under this Agreement have been completed to the reasonable satisfaction of District including, without limitation, CM's transmittal of all deliverables to District required by Appendix A, Services to be Provided by CM, and Appendix D, Deliverables.

- 4.4 Invoices furnished by CM under this Agreement must be in a form acceptable to District. All amounts paid by District to CM shall be subject to audit by District. Payment shall be made by District to CM at the address stated in Paragraph 6.1 below.
- 4.5 District may set off against payments due CM under this Agreement any sums that District determines that CM owes to District because of their errors, omissions, breaches of this Agreement, delays or other acts that caused District monetary damages. Prior to exercising such right, District must demand and attend mediation pursuant to Paragraph 21.3 below of this Agreement, to be attended by District, CM, and any applicable insurance carriers; such mediation to occur within 30 calendar days of demand. If the parties cannot agree upon the time, place, and mediator, within one week of the District's demand, then the Solano District Superior Court may upon application by any party make such selection for the parties. If a party other than District refuses to mediate under this paragraph 4.5, then District shall have satisfied its obligations under this Paragraph.

5. Maximum Costs

- 5.1 District's obligation hereunder shall not at any time exceed the amount approved by District's Board and approved by District for payment to the CM pursuant to the terms of this Agreement.
- 5.2 Except as may be provided by applicable law governing emergency conditions, District has not authorized its Supervisors, employees, officers and agents to request Construction Manager to perform Services or to provide materials, equipment and supplies that would result in Construction Manager performing Services or providing materials, equipment and supplies that exceed the scope of the Services, materials, equipment and supplies agreed upon in the Agreement unless the District amends the Agreement in writing and approves the amendment as required by law to authorize the additional Services, materials, equipment or supplies.
- 5.3 District shall not reimburse CM for Services, materials, equipment or supplies provided by CM beyond the scope of the Services, materials, and office equipment and supplies agreed upon in the Agreement and unless approved by a written amendment to the Agreement having been executed and approved in the same manner as this Agreement.

6. Qualified Personnel

- 6.1 For purposes of this Agreement, except for notices specified under Paragraph 17 below, District and CM shall direct all communications to each other as follows:

District:

Tyson Zimmerman
Assistant General Manager
Ironhouse Sanitary District
450 Walnut Meadows Drive
Oakley, CA 94561
Phone (925) 809-3011
Email Zimmerman@isd.us.com

Construction Manager:

[NAME]

[TITLE]

[ADDRESS]

[PHONE]

[EMAIL]

- 6.2 Services under this Agreement shall be performed only by qualified, competent personnel under the supervision of and/or in the employment of CM. CM shall conform with District's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at District's request, shall be supervised by CM.
- 6.3 Construction Manager agrees that professional personnel assigned to the Project will be those listed in Appendix F, and by this reference incorporated herein, and that the listed personnel will continue their assignments on the Project during the entire term of this Agreement. It is recognized that the listed personnel may in the future cease to be employed by Construction Manager and because of the termination of such employment no longer able to provide Services. However, Construction Manager agrees that replacement of any of the listed personnel during the Agreement period shall only be with other professional personnel who have equivalent experience and shall require the prior written approval of District, which shall not be unreasonably withheld. Any costs associated with replacement of personnel shall be borne exclusively by Construction Manager. Resumes for listed professional personnel are attached via Exhibit 1 to Appendix F, and by this reference incorporated herein.
- 6.4 Construction Manager agrees that should the above personnel not continue their assignments on the Project during the entire term of this Agreement, then Construction Manager shall not charge District for the cost of training or "bringing up to speed" replacement personnel. District may condition its reasonable approval of substitution personnel upon a reasonable transition period wherein new personnel will learn the Project and get up to speed at Construction Manager's cost.

7. Representations

- 7.1 CM represents that it has reviewed Appendix A, Services to be Provided by CM, and that in its professional judgment the Services to be performed under this Agreement can be performed for a fee within the maximum amount set forth in the Compensation Schedule established in Appendix B, Payments to CM, and within the times specified for each individual Project.
- 7.2 CM represents that it is qualified to perform the Services and it possesses, and will continue to possess at its sole cost and expense, the necessary licenses and/or permits required to perform the Services or will obtain such licenses and/or permits prior to time such licenses and/or permits are required. CM also represents that it has knowledge of, and will comply with, all applicable building codes, laws, regulations and ordinances.
- 7.3 Construction Manager represents that it possesses all necessary training, licenses and permits to perform the Services and that its performance of the Services will conform to the standards of practice of a professional having experience and expertise in performing professional services of like nature and complexity of the Services working on similar, successfully completed projects.
- 7.4 The granting of any progress payment by District, or the receipt thereof by CM, or any inspection, review, approval or oral statement by any representative of District or any other governmental entity, shall in no way waive or limit the obligations in this Paragraph 7 or lessen the liability of CM for unsatisfactory Services, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment, inspection, review or approval.

8. Indemnification and General Liability

- 8.1 To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), CM shall defend, indemnify, and hold harmless District, its officers, directors, officials, agents employees, and volunteers (collectively “**Indemnitees**”) from and against any and all claims, suit, action, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of an employee of Consultant or its Subconsultants) expense and liability of every kind, nature, and description, at law or equity, that arises out of, pertain to, or relate to (including without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) any negligence, recklessness, or willful misconduct of Consultant, any Subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively “**Liabilities**”). Such obligations to defend, hold harmless and indemnify and Indemnitee shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence active negligence, or willful misconduct of such Indemnitee but shall apply to all other Liabilities and in no event shall the cost to defend charges to the Consultant exceed the Consultant’s proportionate percentage of fault.
- 8.2 CM shall defend (including providing legal counsel reasonably acceptable to District at no cost to District), indemnify and hold harmless the Indemnitees from all loss, cost, damage, expense, suit, liability or claims, in law or in equity, including attorneys’ fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by District, or any of the other Indemnitees, of articles or Services to be supplied in the performance of this Agreement.

9. Liability of District

- 9.1 Except as provided in Appendix A, Services to be Provided by CM and Appendix E, Insurance, District’s obligations under this Agreement shall be limited to the payment of the compensation provided for in Paragraphs 3, 4, and 5 of this Agreement,
- 9.2 Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, lost profits or revenue, arising out of or in connection with this Agreement, the Services, or the Project.
- 9.3 District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by CM, or by any of its employees, even though such equipment be furnished, rented or loaned to CM by District. The acceptance or use of such equipment by CM or any of its employees shall be construed to mean that CM accepts full responsibility for and shall exonerate, indemnify, defend and save harmless District from and against any and all claims for any damage or injury of any type, including attorneys’ fees, arising from the use, misuse or failure of such equipment, whether such damage be to the CM, its employees, District employees or third parties, or to property belonging to any of the above.
- 9.4 Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which District or Construction Manager may have under this Agreement or any applicable law. All rights and remedies of District or Construction Manager, whether under this Agreement or other applicable law, shall be cumulative.

10. Independent Contractor; Payment of Taxes and Other Expenses

- 10.1 CM shall be deemed at all times to be independent contractors and shall be wholly responsible for the manner in which CM perform the Services required by the terms of this Agreement. CM shall be fully liable for the acts and omissions of it their Subconsultants, employees and agents.

- 10.2 Nothing contained herein shall be construed as creating an employment, agency or joint venture relationship between District and Construction Manager. CM acknowledge that neither they nor any of their employees or agents shall, for any purpose whatsoever, be deemed to be District employees, and shall not be entitled to receive any benefits conferred on District employees, including without limitation workers' compensation, pension, health, insurance or other benefits.
- 10.3 CM shall be solely responsible for payment of any required taxes, including California sales and use taxes, city business taxes and United States income tax withholding and social security taxes, levied upon this Agreement, the transaction, or the Services delivered pursuant hereto.
- 10.4 CM shall make its designated representative available as much as reasonably possible to District staff during the District's normal working hours or as otherwise requested by District. Terms in this Agreement referring to direction from District shall be construed as providing for direction as to policy and the result of Construction Manager's Services only and not as to the means by which such a result is obtained.

11. Insurance

- 11.1 Prior to execution of this Agreement, CM shall furnish to District Certificates of Insurance showing satisfactory proof that it maintains the insurance required by this Contract as set forth in Appendix E, Insurance, which are attached and made a part of this Agreement. CM shall maintain all required insurance throughout the term of this Agreement and as otherwise provided in Appendix E. In the event CM fails to maintain any required insurance, and notwithstanding Paragraph 4.6 above, District may (but is not obligated to) purchase such insurance and deduct or retain premium amounts from any sums due CM under this Agreement (or CM shall promptly reimburse District for such expense).

12. Suspension of Services

- 12.1 District may, without cause, order Construction Manager to suspend, delay or interrupt Services pursuant to this Agreement, in whole or in part, for such periods of time as District may determine in its sole discretion. District shall deliver to Construction Manager written notice of the extent of the suspension at least seven (7) calendar days before the commencement thereof. Suspension shall be treated as an Excusable Delay and Construction Manager shall be compensated for such delay to the extent provided under this Agreement.
- 12.2 Notwithstanding anything to the contrary contained in this Paragraph 12, no compensation shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by a cause for which Construction Manager is responsible.

13. Termination of Agreement for Cause

- 13.1 If at any time District believes Construction Manager may not be adequately performing their obligations under this Agreement, that Construction Manager may fail to complete the Services as required by this Agreement, or that District has provided written notice of observed deficiencies in Construction Manager's performance, District may request from Construction Manager prompt written assurances of performance and a written plan, acceptable to District, to correct the observed deficiencies in Construction Manager's performance ("**Cure Plan**"). The Cure Plan must include, as applicable, evidence of necessary resources, correction plans, Subconsultant commitments, schedules and recovery schedules, and affirmative commitments to correct the asserted deficiencies, must meet all applicable requirements and show a realistic and achievable plan to cure the breach. CM shall provide such written assurances and Cure Plan within ten (10) calendar days of the date of notice of written request. CM acknowledges and agrees that any failure to provide written assurances and Cure Plan to correct observed deficiencies, in the required time, is a material breach under this Agreement.

13.2 CM shall be in default of this Agreement and District may, in addition to any other legal or equitable remedies available to District, terminate Construction Manager's right to proceed under the Agreement, in whole or in part, for cause:

- a. Should Construction Manager make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged a bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, file any answer admitting or not contesting the material allegations of a petition filed against Construction Manager in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Construction Manager or of all or any substantial part of the properties of Construction Manager, or if Construction Manager, its directors or shareholders, take action to dissolve or liquidate Construction Manager; or
- b. Should Construction Manager commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of notice from District to Construction Manager demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Construction Manager to avail themselves of this time period in excess of ten (10) calendar days, CM must provide District within the ten (10) calendar day period a written Cure Plan acceptable to District to cure said breach, and then CM must diligently commence and continue such cure according to the written Cure Plan); or
- c. Should Construction Manager violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency in effect at the time of performance of the Services and applicable to the Project or Services and does not cure such violation within ten (10) calendar days of the date of the notice from District to CM demanding such cure; or, if such failure is curable but not curable within such ten (10) calendar day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Construction Manager to avail themselves of this time period in excess of ten (10) calendar days, CM must provide District within the ten (10) calendar day period a written Cure Plan acceptable to District to cure said breach, and then CM must diligently commence and continue such cure according to the written Cure Plan.)

13.3 In the event of termination by District as provided herein for cause:

- a. District shall compensate CM for the value of the Services delivered to District upon termination as determined in accordance with the Agreement, subject to all rights of offset and backcharges, but District shall not compensate CM for its costs in terminating the Services or any cancellation charges owed to third parties.
- b. CM shall deliver to District possession of all tangible aspects of the Services in their then condition including, but not limited to, all copies (electronic, CAD, and PDF format, and hard copy) of designs, engineering, Project records, cost data of all types, drawings and specifications and contracts with vendors and Subconsultants, and all other documentation associated with a Project, and all supplies and aids dedicated solely to performing Services which, in the normal course of the Services, would be consumed or only have salvage value at the end of the Services period.
- c. CM shall remain fully liable for the failure of any Services completed and drawings and specifications provided through the date of such termination to comply with the provisions of the Agreement. The provisions of this Paragraph shall not be interpreted to diminish any right that District may have to claim and recover damages for any breach of this Agreement, but rather, CM shall compensate District for all loss, cost, damage, expense, and/or liability

suffered by District as a result of such termination and failure to comply with the Agreement, including without limitation District's costs incurred in connection with finding a replacement.

- 13.4 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience pursuant to Paragraph 14 below, and CM shall have no greater rights than they would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Construction Manager.

14. Termination of Agreement for Convenience

- 14.1 District may terminate performance of the Services under the Agreement in accordance with this Paragraph 14 in whole, or from time to time in part, whenever District shall determine that termination is in the District's best interests. Termination shall be effected by District delivering to CM, at least seven (7) calendar days prior to the effective date of the termination, a Notice of Termination ("Notice of Termination") specifying the extent to which performance of the Services under the Agreement is terminated.
- 14.2 After receipt of a Notice of Termination, and except as otherwise directed by District, Construction Manager shall:
- a. Stop Services under the Agreement on the date and to the extent specified in the Notice of Termination;
 - b. Place no further orders or subcontracts (including agreements with Subconsultants) for materials, Services, or facilities except as necessary to complete the portion of the Services under the Agreement which is not terminated;
 - c. Terminate all orders and subcontracts to the extent that they relate to performance of Services terminated by the Notice of Termination;
 - d. Assign to District in the manner, at times, and to the extent directed by District, all right, title, and interest of CM under orders and subcontracts so terminated. District shall have the right, in its discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
 - e. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of District to the extent District may require. District's approval or ratification shall be final for purposes of this clause;
 - f. Transfer title and possession of Construction Manager's and their Subconsultants' work product to District, and execute all required documents and take all required actions to deliver in the manner, at times, and to the extent, if any, directed by District, completed and uncompleted designs and specifications, Services in process, completed Services, supplies, and other material produced or fabricated as part of, or acquired in connection with performance of, Services terminated by the Notice of Termination; District acknowledges that said documents were prepared for the purpose of the Project.
 - g. Complete performance of any part of the Services that were not terminated by the Notice of Termination; and
 - h. Take such action as may be necessary, or as District may direct, for the protection and preservation of property related to this Agreement which is in Construction Manager's possession and in which District has or may acquire an interest.

- 14.3 After receiving a Notice of Termination, CM shall submit to District a termination claim, in the form and with the certification District prescribes. The claim shall be submitted promptly, but in no event later than three months from the effective date of the termination, unless one or more extensions in writing are granted by District upon Construction Manager's written request made within such three month period or authorized extension. However, if District determines that facts justify such action, it may receive and act upon any such termination claim at any time after such three month period or extension. If CM fail to submit the termination claim within the time allowed, District may determine, on basis of information available to it, the amount, if any, due to CM because of the termination. District shall then pay to CM the amount so determined.
- 14.4 Subject to provisions of Paragraph 14.3 above, CM and District may agree upon the whole or part of the amount or amounts to be paid to CM because of any termination of Services under this Paragraph. The amount or amounts may include a reasonable allowance for profit on Services done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Services terminated. The Agreement may be amended accordingly, and CM shall be paid the agreed amount.
- 14.5 If Construction Manager and District fail, under Paragraph 14.4 above, to agree on the whole amount to be paid to Construction Manager because of termination of Services under this Paragraph 14.5, then Construction Manager's entitlement to compensation for Services specified in the Agreement which are performed before the effective date of Notice of Termination, shall be the total (without duplication of any items) of:
- a. Reasonable value of Construction Manager's Services performed prior to Notice of Termination, based on CM's entitlement to compensation under Appendix B, Payments to CM. Such amount or amounts shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement value of Services terminated. Deductions against such amount or amounts shall be made for deficiently performed Services, rework caused by deficiently performed Services, cost of materials to be retained by Construction Manager, amounts realized by sale of materials, and for other appropriate credits against cost of Services. Such amount or amounts may include profit, but not in excess of ten (10) percent of Construction Manager's total costs of performing the Services.
 - b. When, in opinion of District, the cost of any item of Services is excessively high due to costs incurred to remedy or replace defective or rejected Services (including having to re-perform Services), reasonable value of Construction Manager's Services will be the estimated reasonable cost of performing Services in compliance with the requirements of the Agreement, and any excessive actual cost shall be disallowed.
 - c. Reasonable cost to CM of handling material returned to vendors, delivered to District or otherwise disposed of as directed by District.
- 14.6 Except as provided in this Agreement, in no event shall District be liable for costs incurred by Construction Manager (or Subconsultants) after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement or subcontracts, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting claims or proposals, attorney's fees or other costs relating to prosecution of the claim or a lawsuit, pre-judgment interest, or any other expense that is not reasonable or authorized under Paragraph 14.5 above.

- 14.7 This Paragraph shall not prohibit CM from recovering costs necessary to discontinue further Services under the Agreement as provided for in Paragraph 14.2 above or costs authorized by District to settle claims from Subconsultants.
- 14.8 in arriving at amounts due CM under this Paragraph 14, there shall be deducted:
- a. All unliquidated advance or other payments on account theretofore made to CM, applicable to the terminated portion of Agreement,
 - b. Any substantiated claim that District may have against CM in connection with this Agreement, and
 - c. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by CM or sold under the provisions of this Paragraph 14, and not otherwise recovered by or credited to District.
- 14.9 If the termination for convenience hereunder is partial, before settlement of the terminated portion of this Agreement, CM may file with District a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement that is not terminated. District may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of District and CM to agree upon amount or amounts to be paid to CM for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit District's rights and remedies pursuant to this Agreement or at law.

15. Conflicts of Interest/Other Agreements

- 15.1 CM represents that it is familiar with Section 1090 and Section 87100, et seq., of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of those sections.
- 15.2 CM represents that it has completely disclosed to District all facts bearing upon any possible interests, direct or indirect, which Construction Manager believes any member of District, or other officer, agent or employee of District or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by District for cause. CM shall comply with the District's conflict of interest codes and their reporting requirements.
- 15.3 CM covenants that it presently has no interest, and during the term of this Agreement shall not have any interest, direct or indirect, that would conflict in any manner with the performance of Services required under this Agreement. Without limitation, CM represents to and agrees with the District that CM has no present, and in the future during the term of this Agreement will not have any, conflict of interest between providing the District the Services hereunder and any interest Construction Manager may presently have, or will have in the future, with respect to any other person or entity (including, but not limited to, any federal or state wildlife, environmental or regulatory agency) that has any interest adverse or potentially adverse to the District, as determined in the reasonable judgment of the District.

16. Proprietary or Confidential Information of District; Publicity

- 16.1 CM acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, CM may have access to private or confidential information that may be owned or controlled by District and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to District. CM agree that all

private, confidential, or proprietary information disclosed by District to or discovered by Construction Manager in the performance of the Services shall be held in strict confidence and used only in performance of the Agreement. CM shall exercise the same standard of care to protect such information as a reasonably prudent CM would use to protect its own proprietary data, and shall not accept employment adverse to the District's interests where such confidential information could be used adversely to the District's interests. CM shall notify the District immediately in writing if it is requested to disclose any information made known to or discovered by Construction Manager during the performance of or in connection with the Services pursuant to this Agreement.

16.2 Any publicity or press releases with respect to the Project or Services shall be under the District's sole discretion and control. CM shall not discuss the Services, the Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without District's prior written consent. CM shall have the right, however, without District's further consent, to include representations of Services among Construction Manager's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.

16.3 The provisions of this Paragraph 16 shall remain fully effective indefinitely after termination of Services to the District hereunder.

17. Notices to the Parties

17.1 All notices (including requests, demands, approvals or other communications other than ordinary course Project communications) under this Agreement shall be in writing and shall include the word "NOTICE" in the subject line.

17.2 Notice shall be sufficiently given for all purposes as follows:

- a. When personally delivered to the recipient, notice is effective on delivery.
- b. When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
- c. When delivered by reputable delivery service, with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
- d. Notice by facsimile or electronic mail shall not be allowed or constitute "Notice" under this Paragraph 17.

17.3 Any correctly-addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service,

17.4 Addresses for the purpose of giving notice are set forth in Paragraph 6.1 above. Either party may, by written notice given at any time or from time to time require subsequent notices to be given to another individual person, whether a party or an officer or a representative, or to a different address or fax number, or both, by giving the other party notice of the change in any manner permitted by this Paragraph 17.

18. Record Keeping and Audit Requirements

18.1 CM shall keep such full and detailed accounting records as are necessary for proper financial management of the Project. CM shall maintain a complete and current set of all books and records

relating to the construction of the Project. District shall be entitled, upon forty-eight (48) hour written notice, to inspect all books, records, and accounts kept by CM relating to the work contemplated by this Contract. Within 90 calendar days after Final Completion, CM shall deliver to District those records necessary for District to perform a financial audit of the Project ("Final Audit").

- 18.2 Invoice and progress/final reports and all required audit reports shall be submitted to District in a timely manner.
- 18.3 Maintain adequate fiscal and Project books, records, documents, and other evidence pertinent to CM's work on the Project in accordance with generally accepted accounting principles. Adequate supporting documentation shall be maintained in such detail so as to permit tracing transactions from the invoices, to the financial statement, to the accounting records, and to the supporting documentation. These records shall be maintained for a period of three years after Final Completion of the Project, and shall be subject to examination and/or audit by District or designees, state government auditors or designees.
- 18.4 Make such books, records, supporting documentations, and other evidence available to District or designees, their designated representatives, during the course of the Project and for a period of three years after Final Completion of the Project, and provide suitable facilities for access, monitoring, inspection, and copying thereof. Further, CM agrees to include a similar right of District to audit records and interview staff in any subcontract related to the performance of this Contract.

19. Subcontracting/Assignment/District Employees

- 19.1 CM and District agree that Construction Manager's unique talents, knowledge and experience form a basis for this Agreement and that the Services to be performed by CM under this Agreement are personal in character. Therefore, Construction Manager shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder unless approved by District in a written instrument executed and approved by the District in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Paragraph 19.1 shall confer no rights on any party and shall be null and void.
- 19.2 Construction Manager shall not employ or engage, or attempt to employ or engage, any person who is or was employed by District or any department thereof at any time that this Agreement is in effect, and for a period of two years after the termination of this Agreement or the completion of the Services, without the written consent of District.

20. Other Obligations

- 20.1 Discrimination, Equal Employment Opportunity and Business Practices. CM shall not discriminate against any employee or applicant for employment, nor against any Subconsultant or applicant for a subcontract, because of race, color, religious creed, age, gender, actual or perceived sexual orientation, national origin, disability as defined by the ADA (as defined below) or veteran's status. To the extent applicable, CM shall comply with all federal, state and local laws (including, without limitation, District ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time.
- 20.2 Drug-Free Workplace Policy. CM acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on District premises. CM agrees that any violation of this prohibition by Construction Manager, its employees, agents or assigns shall be deemed a material breach of this Agreement.

- 20.3 Compliance with Americans with Disabilities Act and Rehabilitation Act. CM acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. CM shall provide the Services specified in this Agreement in a manner that complies with the standard of care established under this Agreement regarding the ADA and any and all other applicable federal, state and local disability rights legislation. CM agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Construction Manager, its employees, agents or assigns shall constitute a material breach of this Agreement. CM shall comply with §504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- 20.4 Violation of Non-Discrimination Provisions. Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the CM to penalties, including but not limited to: (a) termination of this Agreement; (b) disqualification of the CM from bidding on or being awarded a District contract for a period of up to 3 years; (c) liquidated damages of \$2,500 per violation; and/or (d) imposition of other appropriate contractual and civil remedies and sanctions. To effectuate the provisions of this section, the District shall have the authority to examine Construction Manager's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Construction Manager under this Agreement or any other agreement between Construction Manager and District. CM shall report to the District the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 calendar days of such filing, provided that within such 30 days such entity has not notified Construction Manager that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. CM shall provide District with a copy of their response to the complaint when filed.

21. Disputes

- 21.1 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Project Manager and a principal of the CM who shall attempt, in good faith, to resolve the dispute. Such referral shall be initiated by written request from either party, and a meeting between the Project Manager and principal of the CM shall then take place within five (5) calendar days of the date of the request.
- 21.2 Provided that District continues to compensate CM in accordance with this Agreement, CM shall continue its Services throughout the course of any and all disputes. Nothing in this Agreement shall allow Construction Manager to discontinue Services during the course of any dispute. Construction Manager's failure to continue Services during any and all disputes shall be considered a material breach of this Agreement CM agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement including, but not limited to, the time to complete the Services. CM also agrees that should Construction Manager discontinue Services due to a dispute or disputes, District may terminate this Agreement for cause as provided herein.
- 21.3 In the event of claims exceeding \$50,000, as a precondition to commencing litigation, the parties shall first participate in non-binding mediation pursuant to the construction mediation procedures of JAMS, in Oakley, California, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the Solano District Superior Court from an approved list of JAMS qualified construction mediators. The parties may initially agree to engage in discovery prior to mediation. Should parties proceed with discovery, they shall follow the

procedures prescribed in the California Code of Civil Procedure, Section 201 9, et seq., and discovery so conducted shall apply in any subsequent litigation as if conducted in that litigation.

22. Agreement Made in California; Venue

- 22.1 This Agreement shall be deemed to have been executed in the City of Oakley, County of Solano. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. The exclusive venue for all disputes or litigation arising out of this Agreement shall be in the Superior Court of the County of Solano unless the parties agree otherwise in a written amendment to this Agreement.
- 22.2 The parties shall execute four (4) copies of this Agreement, each of which shall be deemed originals.

23. Compliance with Laws

- 23.1 CM shall comply with the Standard of Care in the interpretation and application of all applicable laws in the performance of the Services, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the date hereof. CM shall comply with all security requirements imposed by authorities with jurisdiction over any Project, and will provide all information, work histories and/or verifications as requested by such authorities for security clearances or compliance.
- 23.2 CM represents that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable laws, codes and regulations and be consistent with the Standard of Care.

24. Miscellaneous

- 24.1 All section and paragraph captions are for reference only and shall not be considered in construing this Agreement.
- 24.2 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by District of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This Paragraph 24.2 shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall commence to run on discovery of the defect and its cause. However, the applicable statutes of repose, California Code of Civil Procedure, Sections 337.1 and 337.15, shall continue to apply.
- 24.3 Any provisions or portion thereof of this Agreement that is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law. In dispute resolution arising from this Agreement, the fact finder shall receive detailed instructions on the meaning and requirements of this Agreement.
- 24.4 Either party's waiver of any breach, or the omission or failure of either party, at any time, to in force in force any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a

waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to in force or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

- 24.5 Except as expressly provided in this Agreement, nothing in this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement. Time is of the essence in the performance of this Agreement.
- 24.6 CM acknowledges that CM, and all Subconsultants hired by CM to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act ("IRCA"). CM is and shall remain in compliance with the IRCA and shall ensure that any Subconsultants hired by CM to perform services under this Agreement are in compliance with the IRCA. In addition, CM agrees to indemnify, defend and hold harmless the District, its agents, officers and employees, from any liability, damages or causes of action arising out of or relating to any claims that CM's employees, or the employees of any Subconsultant hired by CM, are not authorized to work in the United States for CM or its Subconsultant and/or any other claims based upon alleged RCA violations committed by CM or CM's Subconsultant(s).

25. Entire Agreement; Modifications

- 25.1 The Agreement, and any written modification to the Agreement, shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement. The Agreement, and any written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.
- 25.2 To the extent this Agreement conflicts with the terms of any proposal, invoice, or other document submitted to or by either party, the terms of this Agreement shall control.
- 25.3 This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of District, CM expressing such an intention in the case of a modification or by the party waiving in the case of a waiver.
- 25.4 CM, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs and use percentage markups. CM shall require their Subconsultants (if any) to do the same, and the Subconsultants' price proposals shall accompany Construction Manager's price proposals.
- 25.5 CM and its Subconsultants shall, upon request by District, permit inspection of all original unaltered Agreement bid estimates, subcontract Agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.
- 25.6 Changes in the Services made pursuant to this Paragraph 25 and extensions of the Agreement time necessary by reason thereof shall not in any way release Construction Manager's representations and agreements pursuant to this Agreement.

25.7 Whenever the words "**as directed**", "**as required**", "**as permitted**", or words of like effect are used, it shall be understood as the direction, requirement, or permission of District. The words "**approval**", "**acceptable**", "**satisfactory**", or words of like import, shall mean approved by, or acceptable to, or satisfactory to District, unless otherwise indicated by the context.

[SIGNATURE LINES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day first mentioned above.

“District”

IRONHOUSE SANITARY DISTRICT

By: _____

Its: _____

“Consultant”

_____, a California Corporation

By: _____

Its: _____

APPENDIX A

SERVICES TO BE PROVIDED BY CM

This is an Appendix attached to, and made a part of and incorporated by reference to the Agreement dated _____, by and between _____, hereinafter referred to as "**Construction Manager**" or "**CM**" and the Ironhouse Sanitary District, hereinafter referred to as "**District**" providing for professional construction management services.

1. **Description of the Project:**

1.1 The Old Town Pipeline improvement Project located in Oakley, California consists of furnishing all labor, materials, equipment, tools and services necessary to replace existing operating underground sanitary sewer pipelines by open cut excavation.

1.2 The project will be bid with both a Base Bid project and an Additive Bid project. The project may be awarded to the successful Bidder as just the Base Bid project or as the Base Bid project plus the Additive Bid Project.

1.3 The base bid project consists of approximately 7,551 lineal feet of open cut replacement of existing 8-inch Diameter and smaller sewer, and the Additive Bid project consists of approximately 1,845 lineal feet of open cut replacement of existing 6-inch Diameter and 253 lineal feet of 15 inch sewer. Work will include construction, replacement, modification of sanitary sewer manholes, potholing and preservation of existing utilities, final cleaning, pre and post construction video inspection of sewers, sheeting, shoring, and bracing of excavations, maintaining and bypassing of sewage flows, traffic control, construction or reconnection of sewer laterals, backfilling and compaction, repair or replacement of pavement and markings, disposal of removed materials and spoils, quality control testing, and providing temporary facilities, according to project plans and specifications and the contract documents.

1.4 The estimate for the work included in the Base Bid project \$2,382,622.94.

1.5 The estimate for the work included in the Additive Bid project is \$645,831.38.

2. **Basic Services:**

2.1 The Consultant is expected to provide the requested services necessary during construction of the Project. Throughout the duration of the Project, the Consultant shall meet with ISD staff to provide necessary updates and seek input as needed to implement the work.

2.2 The selected Consultant shall thoroughly review existing bid documents to become familiar with the Project. The selected consultant shall perform the following services:

2.3 PRECONSTRUCTION ACTIVITIES

a. Consultant shall prepare the agenda for and lead the preconstruction meeting. Consultant shall coordinate with the Contractor regarding items to be submitted at the preconstruction meeting. Consultant shall also prepare a preliminary submittal list, and provide this list to the Contractor at the meeting.

2.4 CONSTRUCTION ACTIVITIES

a. Construction Administration

1. Consultant shall provide administration and coordination throughout construction of the Project, shall serve as the Project Coordinator and the point of contact for all communications, and shall coordinate activities of ISD, the design

consultant, and the Contractor. All substantive communications between Consultant and the Contractor shall be in writing.

2. Consultant shall establish, implement and maintain a document management system that shall maintain and track all correspondence, documents, submittals, change orders, reports and other administrative matters related to the Project. ISD shall have access to the documentation system. At the conclusion of the Project, Consultant shall provide an indexed, pdf library of all documents that are stored in the document management system.

3. Consultant shall provide Project information to ISD as requested to assist ISD in the preparation and issuance of any Project information to the public.

4. Consultant shall prepare a monthly project summary report updating ISD on the status of construction and documenting key issues, and any issue resolutions that arose during the prior month.

b. Progress Meetings

1. Consultant shall prepare for, lead, and prepare minutes from weekly progress meetings and other construction meetings required during the Project. Consultant and Contractor shall attend meetings in person, and Consultant shall provide a standing conference number for other attendees, including the Design Consultant.

c. Schedule Review

1. Consultant shall review and provide written comments on the Contractor's initial schedule and, when all comments are addressed, shall accept the initial schedule. Consultant shall review regular schedule updates. Consultant shall identify when progress is not being completed in accordance with the schedule, provide updates to ISD, and communicate with the Contractor regarding action plans that are required to assure that the Contractor maintains sufficient progress.

d. Submittals

1. Consultant shall develop and maintain an up-to-date log of submittals and shop drawings, and shall perform an initial check of submittals for general conformity with the contract requirements. If obvious deficiencies are apparent in the submittal, Consultant shall return the submittal to the Contractor for correction before distributing to other parties. Consultant shall distribute submittals for review and action by the appropriate parties, including the Design Consultant, shall review all responses, and shall provide consolidated responses to the Contractor.

e. Requests for Information and Clarifications

1. Consultant shall log and track Requests for Information (RFIs) and clarifications (RFCs). If the RFI or RFC is not valid, the request will be returned directly to the Contractor. Any valid RFIs or RFCs shall be answered by Consultant or routed to the appropriate party, including the Design Consultant. Consultant shall provide a consolidated written response to the Contractor.

f. Change Orders

1. Consultant shall manage the Project to minimize ISD's cost exposure to changes. Consultant shall review change order requests, involve the Design Consultant as needed and make recommendations to ISD concerning approval or denial of Contractor-initiated change orders, and prepare a written response to the Contractor responding to each change order request.

2. Consultant shall negotiate change orders with the Contractor and recommend final negotiated change order values for approval by ISD. Consultant shall prepare change orders in a form acceptable to ISD for execution by the District and the Contractor.

3. For changes completed on a time and materials basis, Consultant shall obtain from the Contractor records of the cost of labor, materials, and equipment and the amount of payments to Sub-contractors incurred by the Contractor in performing the work, as backup documentation for the change order negotiation.

g. Progress Payments

1. Consultant shall review the initial cost breakdown prepared by the Contractor and work with the Contractor to develop a mutually agreeable schedule of values.

2. Consultant shall review payment applications submitted by the Contractor and shall determine whether the application is complete and accurate. When the application for payment is acceptable to Consultant, Consultant shall forward the payment request to ISD for final review and processing.

h. Field Observation

1. Consultant shall monitor the quality of the construction and compliance with the Contract Documents. Consultant services shall include field inspection/observation, and confirmation that materials and equipment are handled, stored and installed properly and meet the requirements of the Contract Documents.

2. Consultant shall advise ISD of any deviations, defects or deficiencies that Consultant observes during construction of the Project, and shall make recommendations to ISD about acceptable corrective actions.

3. Consultant shall prepare detailed daily inspection reports including photographic documentation of the Project site prior to and during construction.

4. Consultant shall perform special inspections as required by the Contract Documents. Inspections may include, but are not limited to, electrical installations, cathodic protection, concrete, rebar, concrete anchors, soils testing, and environmental compliance.

i. Record Documents

1. Consultant shall maintain a record set of Contract Documents, as developed by the Contractor, to track changes due to RFIs, Clarifications, Change Orders and field adjustments. Consultant shall also evaluate the Contractor's record documents on a monthly basis for accuracy and completeness.

j. System Outages

1. Consultant shall coordinate the System Outage Requests (SORs) provided by the Contractor for any shutdowns and tie-ins of the existing facilities.

k. Stormwater Prevention Plan (SWPPP)

1. Consultant shall coordinate with the Contractor and ISD on the filing of the Notice of Intent and implementation of the SWPPP, as developed by the Contractor if required for the project.

l. Testing and Training

1. Consultant shall coordinate training requirements and activities on all installed equipment.

m. Corrective Work Item List and Punchlist

1. Consultant shall prepare the Corrective Work Item list(s) with input from ISD and the design consultant. Consultant shall confirm that all items identified in the Corrective Work Item list(s) are completed prior to Substantial Completion. Consultant shall prepare a final Punchlist, and confirm that items are addressed before recommending final payment and release of retention.

2.5 POST-CONSTRUCTION ACTIVITIES

a. Project Completion

1. Consultant shall advise ISD when the Project is substantially complete, and when the Project is complete as described further under Project Closeout.

2. Consultant shall calculate and make a recommendation to ISD regarding assessment of liquidated damages or other offsets and withholdings from payment to Contractor.

3. Prior to release of final payment, Consultant shall secure, review and transmit to the ISD the required guarantees, affidavits, releases, bonds and waivers.

b. Project Closeout

1. Consultant shall collect and submit the following close-out documentation to the ISD: annotated Record Drawings provided by the Contractor; warranties and bonds for equipment; keys; tools, spare parts and maintenance materials; contact names, addresses, telephone numbers, fax numbers and email addresses of all contractors, vendors, and equipment suppliers, including emergency contact information.

2. Consultant shall provide written confirmation that the Project is complete and ready for acceptance by ISD.

3. Consultant shall prepare and submit a final Construction Report to ISD which shall include a final accounting of payments made to the Contractor, liquidated damages and other withholdings, adjustments made to the contract cost and time, and any unresolved disputes. Consultant shall provide written

recommendations regarding resolution of any issues that remain in dispute between ISD and the Contractor at the end of the project.

4. Consultant shall provide all project-related documentation to ISD at the end of the Project. All documents stored in the electronic documentation system shall be provided in pdf format, and all other documentation shall be provided in paper form.

C. Warranty Coordination

1. Consultant shall maintain a warranty file during construction, and shall participate in the one-year warranty review with ISD. Consultant shall document any items to be repaired or replaced, and provide a written recommendation to ISD regarding remedial work to be performed or existing conditions to be accepted.

END OF APPENDIX A

APPENDIX B

PAYMENTS TO CM

This is an Appendix to, and made a part of and incorporated by reference to the Agreement dated _____, by and between _____, hereinafter referred to as "**Construction Manager**" or "**CM**" and the Ironhouse Sanitary District, hereinafter referred to as "**District**" providing for professional construction management services.

1. The maximum payment to Construction Manager under this Agreement for the Project shall be:

2. METHODS AND TIMES OF PAYMENT FOR CONSTRUCTION MANAGER'S SERVICES AND EXPENSES

2.1 On a monthly basis, the CM may submit an invoice for services rendered prior to the date of the invoice. Such invoice shall describe in detail the services provided, including time, and specify each staff member who has provided services and the number of hours assigned to each such staff member. Such invoice shall contain a certification by a principal member of CM specifying that the payment requested is for work performed in accordance with the terms of this Agreement. The District will pay CM for all undisputed expenses stated thereon which are approved by District pursuant to this Agreement no later than forty-five (45) days after invoices are received by the District Finance Department.

EXHIBIT 1 TO APPENDIX B

BILLING RATES FOR CONSTRUCTION MANAGEMENT SERVICES

This is an Appendix to, and made a part of and incorporated by reference to the Agreement dated _____, 2020, by and between _____, hereinafter referred to as "**Construction Manager**" or "**CM**" and the Ironhouse Sanitary District, hereinafter referred to as "**District**" providing for professional construction management services.

1. **BILLING RATES** - The Billing Rates for Additional Services beyond the scope of CM's Pricing Proposal are the following hourly rates:

2. **REIMBURSABLE EXPENSES** :

END OF APPENDIX B

APPENDIX C

PROJECTS AND SCHEDULE

This preliminary project schedule is an Appendix to, and made a part of and incorporated by reference to the Agreement dated _____, 2020, by and between _____, hereinafter referred to as "**Construction Manager**" or "**CM**" and the Ironhouse Sanitary District, hereinafter referred to as "**District**" providing for professional construction management services. CM understands that the projects and dates within this list may change.

END OF APPENDIX C

APPENDIX D

DELIVERABLES

This is an Appendix to, and made a part of and incorporated by reference to the Agreement dated _____, 2020, by and between _____, hereinafter referred to as "**Construction Manager**" or "**CM**" and the Ironhouse Sanitary District, hereinafter referred to as "**District**" providing for professional construction management services.

Construction Manager's deliverables under the Agreement are enunciated throughout the Professional Services Agreement and include but are not limited to the following:

1. **PROJECT DELIVERABLES**

- 1.1 CM "Draft" Project Management Plan for management and oversight of the Project.
- 1.2 CM Recommended Staffing Plan for ongoing management of the Project.

2. **CONSTRUCTION MANAGEMENT SERVICES.** The deliverables considered part of construction specific management services are defined in this Appendix D and include, but are not limited to, the following deliverables:

- 2.1 Maintain accurate records and reports on evaluation of Project systems and procedures for management and evaluation of the Project.
- 2.2 Attend Project related meetings.
- 2.3 Analysis of the Project schedule and evaluation of compliance with Project schedule and budget.
- 2.4 Analysis and recommendations concerning the oversight and management of the Project.
- 2.5 Constructability review of the developed project documents.

END OF APPENDIX D

APPENDIX E

INSURANCE REQUIREMENTS

This is an Appendix to, and made a part of and incorporated by reference to the Agreement dated _____, 2020, by and between _____, hereinafter referred to as "**Construction Manager**" or "**CM**" and the Ironhouse Sanitary District, hereinafter referred to as "**District**" providing for professional construction management services.

1. **CM's Duty to Show Proof of Insurance.** CM, in order to protect District and its board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of CM's acts, errors, or omissions in connection with the performance of CM's obligations, as required in this Agreement, shall secure and maintain insurance as described below. CM shall not perform any work under this Agreement until CM has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with the District's authorized insurance representative, insurance Tracking Services Inc. (ITS). Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, CM shall supply proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, CM shall promptly deliver to ITS a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to ITS prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. CM shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by CM or District as an additional insured.

1.1 Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the District), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of CM's performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. CM shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate.

1.2 Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

1.3 Workers' Compensation Insurance

CM shall submit written proof that CM is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the California Labor Code. CM shall require any Subconsultants to provide workers' compensation for all of the Subconsultants' employees, unless the Subconsultants' employees are covered by the insurance afforded by CM. If any class of employees engaged in work or services performed under this Agreement is not covered by

California Labor Code section 3700, CM shall provide and/or require each Subconsultant to provide adequate insurance for the coverage of employees not otherwise covered. CM shall also maintain employer's liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

1.4 Professional Liability Insurance

Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, all negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured, with coverage equal to the policy limits, which shall not be less than two million dollars (\$2,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.

1.5 Self-Insured Retention

Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of insurance or other documentation provided to District and must be approved by the District Risk Manager.

1.6 Claims-Made Basis Coverage

If any of the insurance coverages required under this Agreement is written on a claims-made basis, CM, at CM's option, shall either (i) maintain said coverage for at least five (5) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement; (ii) purchase an extended reporting period of not less than five (5) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

2. **Insurance terms and conditions:**

2.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by CM shall be maintained until the completion of all of CM's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by CM shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by CM in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. CM shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

2.2 District as Additional Insured

On CM's Commercial General Liability and Automobile policies, the Ironhouse Sanitary District, its officers, directors, agents, employees, and volunteers, shall be named as additional insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 1 1 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 1 1 85.

2.3 All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII Any exception to these requirements must be approved by the District Risk Manager.

2.4 If CM is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, CM shall provide coverage equivalent to the insurance coverages and endorsements required above. The District will not accept such coverage unless the District determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by CM is equivalent to the above-required coverages.

2.5 For any claims related to this contract, the Consultant's insurance coverage shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

2.6 Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve CM for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the District from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

2.7 Failure by CM to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by CM. District, at its sole option, may terminate this Agreement and obtain damages from CM resulting from said breach. Alternatively, District may purchase such required insurance coverage, and without further notice to CM, District shall deduct from sums due to CM any premiums and associated costs advanced or paid by District for such insurance. If the balance of monies obligated to CM pursuant to this Agreement are insufficient to reimburse District for the premiums and any associated costs, CM agrees to reimburse District for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by District to take this alternative action shall not relieve CM of its obligation to obtain and maintain the insurance coverages required by this Agreement.

2.8 Should any of the required insurance (other than errors and omissions insurance) be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defenses costs be included in such general aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limit specified above.

2.9 District may (but is under no obligation to) secure project-specific insurance, wrap-up insurance, or administer an owner controlled insurance program ("OCIP"), in which case Construction Manager and its subconsultants shall communicate this fact to their insurance carriers and request that the risk of this project be excluded from their practice policies. Construction Manager's fees under this Agreement (and the fee of its subconsultants under subconsultant agreements) shall be reduced by the amount of insurance premiums that may be avoided by Construction Manager and its subconsultants by virtue of the District's obtaining the project-specific insurance, wrap-up insurance or administering an OCIP, and the exclusion of this project from coverage of Construction Manager's and subconsultants policies. Construction Manager and its subconsultants shall afford District access to their books and records and cooperate with District in verifying the amount of savings realized.

END OF APPENDIX E

APPENDIX F

KEY PERSONNEL

This is an Appendix to, and made a part of and incorporated by reference to the Agreement dated _____, 2020, by and between _____, hereinafter referred to as "**Construction Manager**" or "**CM**" and the Ironhouse Sanitary District, hereinafter referred to as "**District**" providing for professional construction management services.

ARTICLE 1 - CONSTRUCTION MANAGER'S KEY PERSONNEL

1.1 CM's Key Personnel are identified below and their resumes appended to this Appendix F as Exhibit 1, including but not limited to the following:

| Name | Responsibility |
|-------------|-----------------------|
| _____ | Construction Manager |

ARTICLE 2 - CHANGES TO KEY PERSONNEL AND ADDITIONS

2.1 For Key Personnel, CM shall not remove, reassign or make changes to any of the Key Personnel or their assignment durations without District's prior written approval.

2.2 Added personnel ("Added Personnel") shall be added to CM's staff as necessary, but subject to approval by District. Prior to adding personnel, CM will develop a Staffing Plan, subject to District approval. The Staffing Plan will identify staff by position, name, responsibility, rate, and planned level of effort, projected hours, and his or her planned periods of involvement with the Project.

2.3 Unless directed to reduce staff by District, in the event that any Key Personnel or Added Personnel, for any reason thereafter ceases to fill that position, within ten (10) days thereof, CM shall propose a replacement person for District's approval pursuant to the following process:

2.1 CM shall prepare and submit to District for its review, comment and approval, a proposal listing all personnel that CM proposes to assign to the Project as replacement, and the proposed duration of each such assignment.

2.2 Within fifteen (15) days following CM's submittal of the proposal and resumes, District shall either give its written approval of such submission or provide comments. In the event District approval is withheld, CM, in response to such comments, shall promptly, but no later than five (5) business days after receipt of District's comment, make all necessary and appropriate changes to the proposal (including changes in proposed staff) and resubmit it to District for its approval, and such process shall continue until District approves CM's proposed staffing. Such approvals shall not be unreasonably withheld.

2.4 For replacement of Key Personnel, CM shall be subject to liquidated damages as described below, and also may not receive reimbursement for substitute personnel in amounts greater than would have been paid for the initial Key Personnel.

2.5 District may, in its sole discretion, direct CM to add to or reduce CM's staff to meet changing Project requirements. CM's Fee shall be equitably adjusted based upon addition or reduction of CM staff

ARTICLE 3 - UNSATISFACTORY PERSONNEL

3.1 CM shall remove any person employed by CM or any subconsultant whom District may deem incompetent, improper or a hindrance to the progress of any Work or Services on the Project, and in the event of any such removal, CM shall immediately replace (or cause to be replaced) such person with a

properly qualified and experienced replacement and, in the case of removal of any person holding any position described in the Staffing Plan, CM shall propose properly experienced and qualified replacement personnel for District approval, pursuant to the same process as is described in Article 2 above.

ARTICLE 4 - LIQUIDATED DAMAGES FOR KEY PERSONNEL

4.1 CM and District agree that the personal services of the Key Personnel is a material term of the Agreement, and substitution or removal or change in role or level of effort, of such Key Personnel would result in damages to the District, the measure of which would be impractical or extremely difficult to fix, and in lieu of which District and CM have agreed to liquidated damages as described below.

4.2 District may assess and CM shall accept liquidated damages in the amount of three (3) times the gross monthly salary for unauthorized substitutions of any Key Personnel.

4.3 No liquidated damages shall be due under this paragraph if the substitution is required due to death, incapacity, or resignation of Key Personnel.

4.4 District in its sole discretion, may elect to waive, reduce or delay implementation of liquidated damages.

**EXHIBIT 1 TO APPENDIX F
KEY PERSONNEL RESUMES**

END OF APPENDIX F