



AGREEMENT FOR FACILITY MOVE MANAGEMENT SERVICES

This Agreement for FACILITY MOVE MANAGEMENT SERVICES (“Agreement”) is entered into this 1st day of July, 2023 by and between MiraCosta Community College District (“District”) and Consolidated Building Systems, Inc., dba CBSI (“Contractor”). This Agreement is entered into with reference to the following Recitals, all of which are incorporated herein by this reference.

WHEREAS, in or about April 28, 2023, the District issued a Request for Qualifications and Proposals (“RFQ/P”) requesting proposals from commercial moving services firms for facilities move management/planning (“Move Consulting Services”) and physical move of facilities furniture, furnishings and equipment (“FFE”) and pre-packed items (“Move Day Services”); Move Consulting Services and Move Day Services are collectively referred to herein as “Move Services”).

WHEREAS, the Contractor submitted a response to the RFQ/P (“RFQ/P Response”); by this reference, the RFQ/P Response is incorporated herein.

WHEREAS, the Contractor is engaged in the business of providing Move Services and has the capability and capacity to complete the Move Services.

WHEREAS, on June 22, 2023, the District Board of Trustees approved Agenda _____ awarding the Contractor this Agreement.

1. General.

- 1.1. Contractor Personnel. All Move Services shall be completed by employees of the Contractor who possess the skills, knowledge and experience necessary to complete the Move Services assigned to such personnel. All Move Services shall be completed by employees of the Contractor; subcontractors or sub-consultants for completion of any Move Services shall be subject to the prior written consent of the District which may be granted, conditioned or withheld in the sole reasonable discretion of the District.
- 1.2. Compliance With Laws and District Board Policies. All Move Services shall be completed in accordance with applicable laws, ordinances, codes and regulations. At all times during the Term of this Agreement, the Contractor shall maintain in good standing all licenses/permits or other governmental authorizations necessary or required to complete the Move Services. While on District property, Contractor employees shall comply with all applicable rules, regulations and/or policies relating to use/access to District property and personal conduct. Contractor personnel violating applicable policies, regulations or laws are subject to penalties imposed by the policy, regulation or law violated. A current valid California State Driver’s License for all Contractor employees operating a vehicle on District property is required.
- 1.3. Move Services Standards. The Contractor shall complete all Move Services in accordance with: (i) with applicable professional “best practices”; (ii) the terms of this Agreement; and (iii) applicable laws, rules and regulations.
- 1.4. On-Going Move Services; PAA. Completion of any Move Services shall be subject to the District’s issuance of a Project Assignment Amendment (“PAA”) in the form attached hereto as Exhibit A which sets forth the specific scope of the Move Services to be completed, compensation for the Move Services subject to the PAA and other requirements of the Move Services. The District may issue a PAA to the Contractor in the discretion of the District or the District may request the Contractor submit a proposal to complete specific Move Services that will be subject to a PAA. If the District requests a proposal from the Contractor and others to complete Move Services required by a PAA, the District may issue the PAA for such Move Services in the District’s discretion.

- 1.5. Capital Improvement Program Move Services. The District is engaged in a capital improvement program (“CIP”) involving the construction of multiple facilities requiring Move Services. The District has retained a consultant to assist the District in planning, coordination and management of Move Services (“District Move Consultant”) for facilities included in the CIP. A PAA issued for Move Services relating to a facility included in the CIP will note that the facility Move Services subject to the PAA is part of the CIP. The District Move Consultant will serve as the District Representative for CIP Move Services.
- 1.6. Move Services Labor Personnel.
 - 1.6.1. Classification. The Contractor is solely responsible for classification of personnel providing or completing Move Services as an employee or as an independent contractor. The Contractor shall be responsible for all penalties, assessments or other impositions arising out of misclassification of the Contractor’s personnel as an employee or as an independent contractor.
 - 1.6.2. Prevailing Wage Rates. Move Services may require the Contractor’s payment of prevailing wage rates. The District will make best efforts to inform the Contractor of the Move Services under a PAA that are subject to payment of prevailing wage rates. The foregoing notwithstanding, the Contractor is responsible for compliance with prevailing wage rate requirements and penalties, assessments or other impositions arising out of failure to comply with prevailing wage rate requirements. If any portion of the Move Services under a PAA are subject to prevailing wage rates, the Contractor shall file Certified Payroll Records with the Labor Commissioner for such portion of the Move Services.

2. Move Services Consulting.

- 2.1. Scope. The specific scope of Move Services Consulting shall be as set forth in a PPA issued for Move Services Consulting. Move Services Consulting scope may include: general move management advice, move workplan development, end-user coordination and communications plans and other similar activities.
- 2.2. Personnel. The Contractor shall dedicate personnel with the necessary knowledge, skills and to timely, efficiently and economically complete the assigned Move Services Consulting tasks. As required by the nature of a Move Services Consulting assignment, Contractor personnel may be required to meet and confer with District staff and consultants and/or conduct site inspections.
- 2.3. Deliverables. Deliverables to be completed by the Contractor for Move Services Consulting assignments shall be as established in the PAA. Deliverables may include without limitation, reports, compilations, drawings and other similar items.

3. Move Day Services.

- 3.1. Personnel.
 - 3.1.1. Contractor Assignment of Move Day Services Personnel. The Contractor shall assign all necessary supervisory and moving personnel with the necessary knowledge, skills and to timely, efficiently and economically complete the Move Day Services within the time established in the PAA for the Move Day Services. The Contractor is responsible for maintaining complete and accurate records of Move Day Services personnel completing labor services subject to payment of prevailing wage rates.
 - 3.1.2. Contractor Project Manager. The Contractor shall assign a project manager (“Contractor Project Manager”) and all necessary assistants for each Move Day Services assignment. The Contractor Project Manager shall be responsible for supervising and coordinating the Contractor’s Move

Day Services personnel completing the Contractor's Move Day Services obligations under the PAA. Communications of the District Move Consultant or the District to the Project Manager assigned to a Move Day Services shall be deemed communications of the District to the Contractor.

- 3.1.3. Personnel Move Day Services Time. If payment to the Contractor for Move Day Services is in whole or in part based on Contractor personnel time to complete Move Day Services, for purposes of computing the personnel time, personnel time shall begin at the later of: (i) the designated start time noted in the PAA for Move Day Services; or (ii) the actual time of personnel arrival at the site and shall end when all Move Day Services are completed. No time will be allowed for travel-time of Contractor personnel to and from the site of Move Day Services.
- 3.2. Workplan. If a Workplan is developed for Move Day Services, completion of the Move Day Services shall be in accordance with the Workplan.
- 3.3. District Move Coordinator. The District will designate a Move Coordinator for each Move Day Services. Move Day Services shall be coordinated with the District through the Move Coordinator and Move Day Services shall be completed under the supervision and direction of the Move Coordinator. The Move Coordinator shall be the primary point of contact for the Contractor relating to the Move Day Services. All communications of the Contractor to the District relating to Move Day Services shall be through the Move Coordinator.
 - 3.3.1. CIP Move Day Services. If a PAA issued under this Agreement is for Move Day Services relating to a facility constructed under the District's Capital Improvement Program ("CIP"), the Move Coordinator is the District's Move Consultant, Dovetail.
 - 3.3.2. Non-CIP Move Day Services. Move Day Services under this Agreement for relocating facilities contents that are not part of the CIP shall be coordinated and completed under the direction of a District employee designated by the District as the Move Coordinator for such a move.
- 3.4. Move Day Services Responsibilities. As required or directed by the District for each specific Move Day Services, the Contractor shall provide or complete the following:
 - 3.4.1. Move Coordinator Meeting. The Contractor's Project Manager for a Move Day Services shall meet with the Move Coordinator in advance of the scheduled Move Services to understand the scope and nature of the Move Services, building access and move routes, staging and tagging of property to be moved, schedule, required moving supplies, surplus/waste materials disposal and other similar matters relating to the specific Move Services.
 - 3.4.2. Materials and Equipment. The Contractor shall, without adjustment of the payment due for Move Services set forth in the PAA for Move Services, provide all materials and equipment necessary to complete the Move Services. The foregoing include without limitation: moving supplies (boxes, tape, etc.), floor, wall and elevator protective materials; furniture assembly/disassembly tools and other similar items.
 - 3.4.3. Cleaning and Disposal. The site from which property is moved and the site to which property is moved to shall be in a broom-clean condition upon completion of Move Day Services. The Contractor shall segregate waste materials by materials for landfill disposal and materials for recycling. The Contractor shall be responsible for disposal of waste materials by landfill disposal or a recycling facility.
 - 3.4.4. Lost, Damaged or Destroyed Property. Property subject to Move Day Services which is lost, damaged or destroyed shall be subject to full value protection; the Contractor shall be responsible for the replacement value of lost, damaged or destroyed property. Contractor shall

provide full value replacement insurance coverage when applicable, and identified in mover's workplan.

3.4.4.1. For projects requiring Full Value Protection, Contractor shall define its ability to provide this coverage, including coverage scope, claim process details, deductible requirements, coverage limitations, cost calculations, and any other pertinent information. Note that this coverage will be applicable to Capital Improvement Program projects as a standard requirement. The coverage may be requested on other Move projects at the District's discretion.

4. Contractor Payment. Payment to the Contractor for Move Services Consulting and Move Day Services shall be as set forth in the PAA issued for the Move Services. Payments set forth in a PAA for Move Services Consulting or Move Day Services shall be in accordance with the following:

- 4.1. Move Consulting Services. Compensation to the Contractor for Move Services Consulting **shall be based on Contractor's approved proposal for RFQ/P 19-23.**
- 4.2. Move Day Services. Compensation to the Contractor for Move Day Services shall be **based on Contractor's approved proposal for RFQ/P 19-23.**
- 4.3. PAA Compensation Provisions. The compensation due the Contractor for Move Services set forth in the PAA for the Move Services: (i) shall not be subject to adjustment unless the District materially modifies the scope of the Move Services set forth in the PAA; and (ii) includes all costs, fees, expenses and charges of the Contractor to complete the Move Services.
- 4.4. Contractor Billings. Unless otherwise expressly provided in a PAA for Move Services, the Contractor shall submit a billing statement in such form, format and with such substantiating data as required by the District upon completion of the Move Services. If any portion of the labor services to complete Move Services involves labor subject to prevailing wage rate payments, Contractor billings shall include the Contractor Certification of Prevailing Wage Rates and Certified Payroll Records incorporated into this Agreement as Exhibit D. If payment for Move Services includes payment for prevailing wage rate labor, the Contractor's billings will not be processed or deemed submitted to the District unless accompanied by the completed and executed form of Contractor Certification of Prevailing Wage Rates and Certified Payroll Records.
- 4.5. District Payments. The District will make payment of the undisputed amount due on billing invoices within forty five (45) days of the District's receipt of a billing statement.
- 4.6. District Right to Withhold. The District may withhold payment of all or any portion of a billing statement if the District reasonably determines: (i) that Contractor has failed to make payments due employees, independent contractors, or other vendors for work, labor, materials or services provided to the Contractor for completion of the Move Services, including penalties/assessments for prevailing wage rate violations, if applicable; (iii) the Contractor is in default of its obligations under this Agreement; (iv) full value replacement costs for property lost, damaged or destroyed during Move Day Services; or (v) the District has, or may, sustain damages, losses or other costs as a result of the negligent, grossly negligent or willful conduct of the Contractor or its personnel.
- 4.7. Contractor Payments; Contractor Responsibilities. The Contractor is solely responsible for the timely and full payment due its personnel, vendors and subcontractors, if any. The Contractor is solely responsible for classification of its personnel as employees or independent contractors and for any liability, penalty or assessment arising out of misclassification of personnel as employees or independent contractors.



5. Term.

The Term of this Agreement shall commence as of July 1, 2023 and shall terminate thirty-six (36) months thereafter on June 30, 2026.

6. Insurance; Indemnity.

- 6.1. Contractor Insurance. At all times during the Term of this Agreement, the Contractor shall obtain and maintain the insurance coverages noted herein; each required policy of insurance shall be in the minimum coverage amount noted herein.
- 6.2. Workers Compensation Insurance; Employer’s Liability Insurance. The Contractor shall obtain Workers Compensation Insurance covering all employees of the Contractor engaged in operations under this Agreement. The Workers Compensation Insurance shall cover claims under workers’ compensation, disability benefits and other similar employee benefit laws applicable to the Contractor’s operations under this Agreement. The Employer’s Liability Insurance shall cover bodily injury or death by accident or disease to any employee which arises out of the employee’s employment by the Contractor. The Employer’s Liability Insurance may be obtained as a separate policy of insurance or as additional coverage under the Workers Compensation Insurance policy.
- 6.3. Commercial General Liability Insurance. The Commercial General Liability Insurance obtained by the Contractor shall cover the types of claims set forth below which may arise out of or result from the operations of the Contractor under this Agreement. The Commercial General Liability Insurance shall cover: (i) claims for damages for bodily injury, sickness, disease or death of persons other than the Contractor’s employees; (ii) claims for damages due to injury or death of persons or damage to property, including the loss of use thereof; (iii); contractual liability applicable to the obligations under this Agreement; and (iv) completed operations. The Commercial General Liability Insurance policy shall name the District including, without limitation, District officers, directors, employees, representatives, the District’s Board of Trustees and individual members of the Board of Trustees, as additional named insureds thereunder.
- 6.4. Automobile Liability. If the Contractor’s General Liability insurance policy does not cover automobile liability, Contractor shall obtain a separate Automobile Liability insurance policy shall cover claims for damages arising out of bodily injury or death of persons or damage to property arising out of Contractor’s ownership, maintenance or use of motor vehicles.
- 6.5. Minimum Coverage Limits. The minimum coverage limits for policies of insurance of the Contractor and Sub-Contractors, if any, are:

Required Insurance Policy Certificate	Minimum Coverage Limits
Workers Compensation	In accordance with law
Employers Liability	One Million Dollars (\$1,000,000)
Comprehensive General Liability (including property damage and automobile liability)	Two Million Dollars (\$2,000,000) per occurrence/Four Million Dollars (\$4,000,000) in the aggregate
Automobile Liability (it not covered by General Liability Policy)	One Million Dollars (\$1,000,000) Combined Single Limit

- 6.6. Certificates of Insurance; Policy Requirements. Prior to the commencement of the Term of this Agreement, the Contractor shall deliver to the District Representative Certificates of Insurance evidencing each of the insurance coverages required to be obtained and maintained by the

Contractor. Each policy of insurance obtained by the Contractor hereunder shall provide, by endorsement or otherwise, that the policy of insurance will not be permitted to lapse or expire, or to be materially modified without at least thirty (30) days advance written notice to the District. All insurance shall be issued by insurers authorized by California law to issue policies of insurance with a current A.M. Best rating of at least A/VII.

- 6.7. Deductibles; Premiums. The Contractor is solely responsible for the full and timely payment of premiums for policies of insurance the Contractor is required to obtain and maintain under this Agreement. In the event of a loss under a policy of insurance obtained and maintained by the Contractor hereunder, the Contractor shall be solely responsible for payment of the deductible, if any, associated with such loss.
- 6.8. District Rights. If the Contractor fails or refuses to obtain and maintain any policy of insurance required hereunder, the District may, but is not obligated to, obtain such policy of insurance on behalf of the Contractor. If the District obtains a policy of insurance on behalf of the Contractor pursuant to the foregoing, the Contractor shall be responsible for payment of all premiums associated with such policy of insurance and an administrative fee equal to twenty-five percent (25%) of the premium costs
- 6.9. District Insurance. During the Term of this Agreement, the District will maintain insurance against the perils, losses and claims described herein, provided that the District may, in its discretion, elect to self-insure, obtain commercially available insurance policy(ies) or obtain insurance coverages through one or more Joint Powers Authorities.
 - 6.9.1. General Liability Insurance. The District will obtain General Liability Insurance covering the risks of death or bodily injury to persons and damage to property.
 - 6.9.2. Property Casualty Insurance. The District will obtain Property Casualty Insurance which will include coverage for the risks of loss, damage or destruction to the District's buildings and/or campuses. The foregoing notwithstanding, the District's Property Casualty Insurance will not provide coverage for the risk of loss, damage or destruction of items of personal property leased, rented or owned by the Contractor. The Contractor is solely responsible, without additional payment or compensation from the District, for the costs to replace or repair any personal property owned, rented or leased by the Contractor.
- 6.10. Contractor Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the District and, as applicable, its employees, officers, directors, Board of Trustees, individual members of the Board of Trustees, agents and representatives ("the Indemnified Parties") from any and all claims, demands, actions, losses, responsibilities or liabilities of any kind, type or nature for: (i) injury or death of the Contractor's employees; (ii) injury or death of persons or damage to property, or (iii) other costs or charges, directly or indirectly arising out of or attributable, in whole or in part, to the negligent, grossly negligent or willful conduct of the Contractor and/or its employees, agents and representatives. The foregoing shall include, without limitation, attorneys' fees and costs incurred by the Indemnified Parties and shall survive the Contractor's completion of obligations under this Agreement or the earlier termination hereof until barred by the applicable Statute of Limitations.

7. Termination

- 7.1. Termination for Default. Either the District or the Contractor may terminate this Agreement upon written notice to the other if there is a default by the other Party in its performance of a material obligation hereunder including, without limitation: (i) the breach of any material obligation hereunder; (ii) an assignment by Contractor for the benefit of creditors; (iii) one Party files or has

filed against the other party a proceeding for protection under state insolvency laws or the United States Bankruptcy Code; or (iv) either Party conducts operations under this Agreement in violation of applicable laws. If the District exercises the right of termination hereunder, the payment due from the District to the Contractor as of the effective date of termination, if any, shall be based upon Move Services provided prior to the effective date of the termination of this Agreement, reduced by the District's losses, damages, or other costs resulting from the cause(s) for termination of this Agreement.

- 7.2. District Termination of Agreement for District Convenience. The District may, at any time during the Term or an Extended Term, by written notice to the Contractor, elect to terminate this Agreement, in whole or in part, for the District's convenience. In such case, the Contractor shall be entitled to payment for Move Services actually performed as of the effective date of such termination for convenience of the District.
- 7.3. Contractor's Obligations Upon Termination of Agreement. Upon the expiration of the Term or the earlier termination of this Agreement for default or the District's convenience, the Contractor shall assemble and deliver to the District all work product, instruments of service and other items of a tangible nature (whether in the form of documents, drawings, maintenance manuals, equipment specifications, samples or electronic files) prepared by or on behalf of the Contractor in connection with Move Services Consulting services under this Agreement. The Contractor shall deliver the originals of all work product, instruments or service and other items of a tangible nature within ten (10) days of the District's request for such materials. Notwithstanding any payment due from the District to the Contractor as of the District's termination of this, the District is not obligated to disburse such payment and the Contractor is not entitled to receipt of such payment until after the Contractor has fully complied with the foregoing.

8. Miscellaneous.

- 8.1. Governing Law; Interpretation. This Agreement shall be governed and interpreted in accordance with California law. This Agreement shall be interpreted as a whole in accordance with its fair meaning and not strictly for or against the Contractor or the District. Marginal headings in this Agreement are for convenience of reference only and shall not enlarge or diminish any rights or obligations of the District or the Contractor. In the event of conflicts or inconsistencies between the terms of this Agreement and any portion of the RFP Response, the terms of this Agreement shall govern and control.
- 8.2. Cumulative Rights and Remedies. Duties and obligations set forth in this Agreement are in addition to and not in lieu of duties and obligations arising by operation of law and applicable to the transaction contemplated in this Agreement. No action or failure to act by the District shall be deemed a waiver of any right or remedy afforded the District under this Agreement or by operation of law nor a waiver of any default or breach by the Contractor of its obligations under this Agreement.
- 8.3. Prohibition on Harassment.
- 8.3.1. District's Policy Prohibiting Harassment. The District is committed to providing a campus and workplace free of sexual harassment and harassment based on factors such as race, color religion, national origin, ancestry, age, medical condition, marital status, disability or veteran status. Harassment includes without limitation, verbal, physical or visual conduct which creates an intimidating, offensive or hostile environment such as racial slurs; ethnic jokes; posting of offensive statements, posters or cartoons or similar conduct. Sexual harassment includes without limitation the solicitation of sexual favors, unwelcome sexual advances, or other verbal, visual or physical conduct of a sexual nature.

- 8.3.2. Contractor's Adoption of Anti-Harassment Policy. Contractor shall adopt and implement all appropriate and necessary policies prohibiting any form of discrimination in the workplace, including without limitation harassment on the basis of any classification protected under local, state or federal law, regulation or policy. Contractor shall take all reasonable steps to prevent harassment from occurring, including without limitation affirmatively raising the subject of harassment among its employees, expressing strong disapproval of any form of harassment, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment and informing complainants of the outcome of an investigation into a harassment claim.
- 8.4. Contractor Independent Contractor Status. In performing its obligations under this Agreement, the Contractor is an independent Contractor to the District. Neither the Contractor nor any of Contractor's employees are entitled to rights or benefits as employees of the District.
- 8.5. Maintenance of Books and Records. The Contractor shall maintain books and accounting records of expenses and revenue in connection with its operations under this Agreement. Books and accounting records shall be contemporaneously maintained in accordance with generally accepted accounting principles applied in a consistent manner. Books and accounting records, along with underlying source data, shall be available to the District for review, inspection or reproduction upon reasonable advance request at the Contractor's principal place of business or at the District Administrative Offices. The Contractor shall maintain its books and accounting records relating to Move Services under this Agreement for five (5) years after expiration of the Term hereof or the earlier termination of this Agreement.
- 8.6. Time. Time is of the essence in the performance and completion of obligations hereunder. The foregoing notwithstanding, performance of the Parties under this Agreement shall be excused if force majeure events that are unforeseeable and unavoidable casualties or other unforeseen causes beyond the control, and without fault or neglect, of the District or the Contractor. Force majeure events include unanticipated and unavoidable labor disputes, unusual and unanticipated delays in transportation of equipment or materials reasonably necessary for completion and proper execution of Move Services, unanticipated unusually severe weather conditions, acts of God, accident, riots, war, terrorist act, epidemic, pandemic (including the COVID-19 pandemic), public health orders and/or civil commotion. The financial resources of the Contractor and other Contractor resources necessary to complete Move Services shall not be deemed force majeure events.
- 8.7. Confidential/Proprietary Information. The Contractor and its personnel may, in the course of completing obligations hereunder: (i) prepare materials consisting of or incorporating District confidential/proprietary information; or (ii) have access to District confidential/proprietary information. Except as required by a valid order of a court of competent jurisdiction, the Contractor and its personnel shall not disburse, distribute or disseminate to any person or entity in any and in whole or in part any District confidential/proprietary information.
- 8.8. Severability. If any term or condition of this Agreement is deemed invalid, unenforceable or void by a court of competent jurisdiction, such term or condition shall be deemed severed from this Agreement and all remaining terms and conditions shall remain in full force and effect.
- 8.9. Notices. Notices under this Agreement shall be delivered by United States Mail, Certified, Return Receipt Requested with postage fully prepaid or by email. Notices delivered by United States Mail shall be deemed effective the third (3rd) working day after the postmark date. Notices delivered by email before 12:00 PM on District workdays shall be deemed effective four (4) hours after delivery to the recipient's email server. Emails delivered to the recipient's email server after 12:00 PM on a



District work day or on District holiday days shall be deemed effective as of 12:00 PM the ensuing workday. The recipients and addresses for notices may be modified by the Parties by notice to the other. Notices shall be addressed as follows:

If to the District:

Mina Hernandez
Director of Purchasing & Material Management
MiraCosta Community College District
1 Barnard Drive
Oceanside, CA 92056

If to the Contractor:

David Suter
President
Consolidated Building Systems, Inc., dba CBSI
1870 Cordell Court, Suite 104
El Cajon, CA 92020

8.10. Disputes

- 8.10.1. Mandatory Mediation. All claims, demands, disputes and other matters in controversy between the District and the Contractor arising out of or relating to the HVAC Operations Services under this Agreement (collectively "Claims") are subject to mandatory non-binding mediation conducted under the auspices of the American Arbitration Association ("AAA") prior to either the District or the Contractor initiating binding arbitration procedures.
- 8.10.2. Government Code Claim Requirements. Pursuant to Government Code §930.6, Claims asserted by the Contractor against the District for money or damages, including without limitation Claims remaining after completion of the non-binding mediation resolution procedures described above are deemed a "suit for money or damages" and shall be subject to the provisions of Government Code §§945.4, 945.6 and 946 ("Government Code Claims Process"). An express condition precedent to the Contractor's initiation of binding arbitration proceedings relating to Claims is the Contractor's compliance with the Government Code Claims Process, including without limitation, presentation of the Claims and action thereon by the District or deemed rejected by the District in accordance with Government Code §900, et seq.
- 8.10.3. AAA Arbitration. Claims remaining after the mandatory mediation and Government Code Claims Process shall be resolved by binding arbitration conducted before a retired judge in accordance with the AAA rules in effect as of the date that a Demand for Arbitration is filed, except as expressly modified herein. The locale for any arbitration commenced hereunder shall be the regional office of the AAA closest to the Site.
- 8.10.4. Demand for Arbitration. A Demand for Arbitration shall be filed and served within a reasonable time after the occurrence of the claim, dispute or other disagreement giving rise to the Demand for Arbitration, but in no event shall a Demand for Arbitration be filed or served after the date when the institution of legal or equitable proceedings based upon such claim, dispute or other disagreement would be barred by the applicable statute of limitations.

- 8.10.5. Discovery. The discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 shall be applicable to arbitration proceedings commenced hereunder and the same shall be deemed incorporated herein by this reference.
- 8.10.6. Arbitration Award. The award rendered by the Arbitrator(s) (“Arbitration Award”) shall be final and binding upon the District and the Contractor only if the Arbitration Award is: (i) supported by substantial evidence; (ii) based on applicable legal standards in effect that the time the Arbitration Award is issued; and (iii) supported by written findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296. Any Arbitration Award that does not conform to the foregoing is invalid and unenforceable. The District and Contractor hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§1286.4 and 1296, vacate the Arbitration Award if, after review, the Court determines either that the Arbitration Award does not fully conform to the foregoing. The confirmation, enforcement, vacation or correction of an arbitration award rendered hereunder shall be made by the Superior Court of the State of California for the County of Orange. The substantive and procedural rules for such post-award proceedings shall be as set forth in California Code of Civil Procedure §1285 et seq.
- 8.10.7. Arbitration Award. The award rendered by the Arbitrator(s) (“Arbitration Award”) shall be final and binding upon the District and the Contractor only if the Arbitration Award is: (i) supported by substantial evidence; (ii) based on applicable legal standards in effect that the time the Arbitration Award is issued; and (iii) supported by written findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296. Any Arbitration Award that does not conform to the foregoing is invalid and unenforceable. The District and Contractor hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§1286.4 and 1296, vacate the Arbitration Award if, after review, the Court determines either that the Arbitration Award does not fully conform to the foregoing. The confirmation, enforcement, vacation or correction of an arbitration award rendered hereunder shall be made by the Superior Court of the State of California for the County of Orange. The substantive and procedural rules for such post-award proceedings shall be as set forth in California Code of Civil Procedure §1285 et seq.
- 8.10.8. Arbitration Fees and Expenses. The expenses and fees of the Arbitrator(s) shall be divided equally among all of the parties to the arbitration. Each party to any arbitration commenced hereunder shall be responsible for and shall bear its own attorneys’ fees, witness fees and other costs or expenses incurred in connection with such arbitration. The foregoing notwithstanding, the Arbitrator(s) may award arbitration costs, including Arbitrators’ fees but excluding attorneys’ fees, to the prevailing party.
- 8.10.9. Limitation on Arbitrator. The Superior Court for the State of California for the County of San Diego has the sole and exclusive jurisdiction, and an arbitrator has no authority, to hear and/or determine a challenge to the commencement or maintenance of an arbitration proceeding on the grounds that: (i) the subject matter of the arbitration proceeding is barred by the applicable statute of limitations; (ii) the subject matter of the arbitration proceeding is barred by a provision of the California Government Claims Act; (iii) the subject matter of the arbitration proceeding is outside the scope of the arbitration clause; (iv) the Contractor has failed to satisfy all conditions precedent to commencement or maintenance of an arbitration proceeding; or (v) waiver of the right to compel arbitration; (vi) grounds exist for the revocation of the arbitration agreement.



- 8.11. Limitation on Special/Consequential Damages. In the event of the District’s breach or default of its obligations under the Agreement, the damages, if any, recoverable by the Contractor shall be limited to general damages which are directly caused by the breach or default of the District and shall exclude any and all special or consequential damages, if any. The Contractor expressly acknowledges the foregoing limitation to recovery of only general damages from the District if the District is in breach or default of its obligations under the Contract Documents; the Contractor expressly waives and relinquishes any recovery of special or consequential damages from the District.
- 8.12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.
- 8.13. No Assignment. Neither the District nor the Contractor shall assign this Agreement without the prior consent of the other. The District’s consent to the Contractor’s assignment may be granted, denied or conditioned in the sole discretion of the District.
- 8.14. Entire Agreement. This Agreement, the RFQ/P, the RFQ/P Response and the Exhibits identified below, constitute the entire agreement and understanding between the Parties concerning the subject matter hereof. The foregoing notwithstanding, if there is any conflict or inconsistency between the terms of this Agreement and any portion of the RFP Response, the terms of this Agreement shall govern and prevail. This Agreement supersedes and replaces all prior verbal and written negotiations, understandings and/or agreements of the Parties relating to the subject matter hereof. This Agreement may be amended only by written instrument duly executed by or on behalf of the Parties. Exhibits attached to this Agreement and incorporated into this Agreement are:

- Exhibit A Project Assignment Amendment
- Exhibit B Personnel Rate Schedule
- Exhibit C Equipment and Materials Rate Schedules

“District”
MiraCosta Community College District

“Contractor”
Consolidated Building Systems, Inc, dba CBSI

Tim Flood
 Vice President, Administrative Services

David Suter
 President



**PROJECT ASSIGNMENT AMENDMENT
EXHIBIT A TO
AGREEMENT FOR FACILITY MOVE MANAGEMENT SERVICES**

This Project Assignment Amendment (“PAA”) is entered by and between MiraCosta Community College District and Consolidated Building Systems, Inc., dba CBSI (“Contractor”) as of [Click here to enter a date..](#)

WHEREAS, the District and the Contractor entered into a written Agreement titled Agreement for FACILITY MOVE MANAGEMENT SERVICES (“Agreement”) generally establishing terms and conditions for the completion of Move Services.

Whereas, this PAA sets forth the specific terms and conditions applicable to the District assignment of the Assigned Project to the Contractor for completion of Move Services.

NOW THEREFORE, the District and Architect and agree as follows:

1. Move Services. The Move Services under this PAA are:

- Move Services Consulting
- Move Day Services
- Not Applicable

2. Move Services Consulting. If the Move Services are in the nature of Move Services Consulting, the subject matter, scope and nature of the Move Services Consulting is generally described as:

3. Move Day Services. If the Move Services are in the nature of Move Day Services, the Move Day Services shall be for the following:

3.1. Move From and Move To. The Move From and the Move To locations are:

Move From Location:	
Move To Location:	

3.2. CIP or Non-CIP Move Day Services. The Move Day Services is for a move relating to the District’s Capital Improvement Program (“CIP”) or is a non-CIP Move Day Services as indicated below:

- CIP Move Day Services
- Non-CIP Move Day Services



4. Schedule.

4.1. Move Services Consulting. If the Move Services are in the nature of Move Services Consulting, the Contractor shall begin the Move Services Consulting on Click or tap to enter a date. and shall complete the Move Services Consulting on Click or tap to enter a date..

4.2. Move Day Services. If the Move Services are in the nature of Move Day Services, the Move Day Services shall begin at _____ (start time) on Click or tap to enter a date. and shall be completed by _____(end time) on Click or tap to enter a date..

5. Contractor Payment. The payment due the Contractor for completing the Move Services under this PAA is:

Lump sum, fixed price of _____ Dollars (\$ _____) inclusive of all costs.

OR

Personnel time billings and all materials, with a not to exceed billing amount of _____ Dollars (\$ _____).

6. Incorporation of Agreement Terms and Conditions. Except as expressly set forth in this PAA, all of the terms and conditions of the Agreement are incorporated herein.

“District”

MiraCosta Community College District

“CONTRACTOR”

Consolidated Building Systems, Inc., dba CBSI

Tim Flood
Vice President, Administrative Services

By: _____
Title: _____



**EXHIBIT B TO
AGREEMENT FOR FACILITY MOVE MANAGEMENT SERVICES**

PERSONNEL RATE SCHEDULE PER CONTRACTOR'S PROPOSAL SUBMISSION DATED 5/19/23



**EXHIBIT C TO
AGREEMENT FOR FACILITY MOVE MANAGEMENT SERVICES
EQUIPMENT AND MATERIALS RATE SCHEDULES PER
CONTRACTOR'S PROPOSAL SUBMISSION DATED 5/19/23**



**EXHIBIT D
VERIFICATION OF CERTIFIED PAYROLL RECORDS SUBMITTAL TO LABOR COMMISSIONER**

I am the _____ for _____ in
(Superintendent/Project Manager) (Contractor)

connection with the Agreement for On-Going Facility Move Services between the Contractor and MiraCosta Community College District.

1. This Verification is submitted to MiraCosta Community College District concurrently with the Contractor’s submittal of Billing Invoice Number _____ dated _____ (“the Pay Application”).
2. The Pay Application requests the District’s disbursement of a payment for services completed under the Agreement for On-Going Facility Move Services.
3. The Contractor has submitted Certified Payroll Records (“CPR”) to the Labor Commissioner for all employees of the Contractor engaged in performance of Work subject to prevailing wage rate requirements for the period of time covered by the Pay Application.
4. All Subcontractors who are entitled to any portion of payment to be disbursed pursuant to the Pay Application have submitted their CPRs to the Labor Commissioner for all of their employees performing Work subject to prevailing wage rate requirements for the period of time covered by the Pay Application.
5. I have reviewed the Contractor’s CPRs submitted to the Labor Commissioner. The CPRs submitted to the Labor Commissioner by the Contractor are complete and accurate for the period of time covered by the Pay Application.
6. I have reviewed the Subcontractors’ CPRs submitted to the Labor Commissioner. The CPRs submitted to the Labor Commissioner by the Subcontractors are complete and accurate for the period of time covered by the Pay Application.

I declare under penalty of perjury under California law that the foregoing is true and correct. I executed this Certification on the ____ day of _____, 20__ at _____.
(City and State)

By: _____

(Typed or Printed Name)