



## **EXHIBIT A**

REQUEST FOR PROPOSALS NO. 182  
CONSTRUCTION MANAGEMENT AT-RISK SERVICES

**CONSTRUCTION MANAGEMENT AT-RISK SERVICES  
AGREEMENT**

## CONSTRUCTION MANAGEMENT AT-RISK SERVICES AGREEMENT

This Construction Management Services Agreement (“Agreement”) is made and entered into between the SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT (hereinafter “District”) and [REDACTED] (hereinafter referred to as “Construction Manager”) for construction management services to be performed in an “at-risk” capacity, while serving as an agent of District to facilitate cost effective and complete design, thorough packaging of complete scopes of work for each separate trade involved, and management of separate trade contracts awarded after public bidding, to ensure timely completion of all work for an agreed price, for the “Construction Manager At-Risk” construction project delivery method for work on the [REDACTED] (“Project”), located at [REDACTED] San Bernardino, California.

### RECITALS

**WHEREAS**, the District owns a parcel of land located at [INSERT ADDRESS] in the City of San Bernardino, California, where the District intends to build and operate the [INSERT PROJECT];

**WHEREAS**, District and Construction Manager intend that Construction Manager will facilitate, coordinate, and manage construction of the Project through thorough packaging of complete scopes of work for each separate trade involved, and management of separate trade contracts awarded after public bidding, to ensure timely completion of all work in accordance with Construction Manager’s preliminary budget set forth herein at **Exhibit A**;

**WHEREAS**, Construction Manager will provide a proposed price for construction of the Project (“Price”) as defined in Article 3 hereof;

**WHEREAS**, District and Construction Manager contemplate and intend that each and all of the Trade Contracts publicly bid and awarded by the District shall be assigned from the District to Construction Manager, following execution of this Agreement, and a copy of the Assignment Agreement to be entered into between District, Construction Manager, and each Trade Contractor is attached hereto as **Exhibit B**; and,

**WHEREAS**, District desires to receive, and Construction Manager desires to provide a guaranteed date for completion of the Project, and Construction Manager therefore does guarantee completion of the Project on or before [INSERT COMPLETION DATE], subject to adjustment pursuant to the Contract Documents.

**NOW, THEREFORE**, based upon the covenants and conditions set forth herein and the payments provided herein, the parties agree as follows:

**ARTICLE 1: CONSTRUCTION MANAGER’S SERVICES AND RESPONSIBILITIES.**

Construction Manager represents to District that it has experience and expertise in construction supervision; Trade Bid Package preparation and scoping; bid evaluation; project scheduling; cost benefit analysis; claims review and negotiation; and general management and administration of construction projects. Construction Manager further represents to the District that it is properly registered with the Department of Industrial Relations and qualified to perform public works in accordance with Labor Code sections 1725.5 and 1771.1 at all times during the term of this Agreement. Construction Manager covenants to provide its best skill and judgment in furthering the interests of District in the management of the construction of the Project. Construction Manager shall be responsible, to the extent described in this Agreement, for ensuring that the Project is properly completed in a competent and professional manner within the District’s budget and in accordance with the District’s schedule for timely completion of the Project. Construction Manager shall not bid or perform any construction work on the Project, including any work involved in any of the Trade Bid Packages (Trade Contracts). Construction Manager shall comply with any and all applicable prevailing wage laws, and Chapter 1 of Part 7, of Division 2, of the California Labor Code, and any Labor Compliance Program instituted by or on behalf of District. Construction Manager agrees to furnish efficient business administration and management services and to perform in an expeditious and economical manner consistent with the interests of District. Construction Manager agrees that in the event that District seeks state funding for the Project and the State Allocation Board (SAB) or other state agency adopts a policy for construction management at-risk services applicable to the Project, Construction Manager shall comply with any new Policy applicable to construction management at-risk services and the Project, and this Agreement shall be revised to comply with any new Policy if the District is required to comply with a new Policy as a condition for receiving any funding for the Project, subject to Construction Manager’s right to seek additional compensation, or additional time to complete the Project, resulting from such required revisions to the Agreement.

**1.1. PRECONSTRUCTION SERVICES PHASE.**

The services to be provided during the Preconstruction Phase for the Project include, but are not limited to, providing responsible evaluation, reporting, documentation, recommendations and supervision of the following services: preparation and review of all contract documents to confirm and improve design coordination; development of preliminary master construction schedule; cost evaluation and development of the Project Budget; value engineering; bidding strategies; prequalification of Trade Contractors and subcontractors; and Trade Bid Package document preparation.

1.1.1. Contract Document Coordination Review. Construction Manager shall review and make recommendations on District’s “front end” bidding documents and contract requirements, general requirements, construction administrative procedures, specifications, and perform plan coordination reviews, and a limited constructability review. In its review of the drawings and specifications and any recommendations regarding such documents pursuant to this Agreement,

Construction Manager does not assume any responsibility for any of the Architect's design errors, omissions and/or inconsistencies.

1.1.2. Preliminary Construction Schedule. Construction Manager shall prepare a preliminary construction schedule, subject to acceptance by the District. It shall contain key milestones to be accomplished by the participants, including, but not limited to: Trade Contractor's activity durations; the Project's critical path; Architect and any consultant activities; and state/local agencies having jurisdiction over the Project. This information shall be incorporated into the bidding documents and subsequent Trade Contracts with the successful bidders.

1.1.3. Cost Evaluation and Project Budget. Construction Manager shall evaluate the final construction cost estimate prepared by the Architect. The estimate review shall consider unit prices and current labor, equipment, material and Trade Contractor market conditions. Construction Manager shall perform a comparison of the final construction cost estimate with the District's preliminary Project Budget in association with the District. Cost line items shall be established for estimate validation purposes by the Construction Manager for each Trade Bid Package. This process will be used for bid evaluations and for budgeting purposes only, and for use by District in determining the total funds required to complete the Project. Construction Manager will provide budget information for the Project. The Project Budget shall be based upon all of the anticipated construction costs required for the construction of the Project, including the following costs: (1) the total of all the separate contracts for the Project pursuant to Section 1.1.6 (excluding the types of change orders referenced in Section 3.11.3 of this Agreement); (2) Construction Manager's compensation; (3) General Conditions and Staff Costs as provided in this Agreement; (4) Construction Contingency for the Project; (5) Scope Interface Contingency ((4) and (5) are collectively "Contingency Funds"); and (6) Insurance Costs ((1), (2), (3), (4), (5), and (6) are collectively "Project Costs").

1.1.4. Value Engineering. Construction Manager shall evaluate the Contract Documents and present value engineering recommendations to the District and Architect for consideration. In addition to the Construction Manager's own assessment, the Construction Manager shall gather post-bid value engineering input from the apparent low bidder and second low bidder Trade and forward the recommendations to the Architect and/or District for consideration.

1.1.5. Bidding Strategies. Construction Manager shall propose to the District and its consultants bidding strategies with an emphasis upon timing, marketing/outreach to the contracting community, and development of alternates, including the Construction Manager's philosophy regarding the number and breakdown of Bid Packages between the trades to best suit this Project. Construction Manager shall prepare contractor and subcontractor pre-qualification documents and identify potential bidders for District approval.

1.1.6. Trade Bid Package Document Preparation. Construction Manager shall assume responsibility for the separation of the Project specifications and drawings into separate Bid Packages for all appropriate and required categories of work ("Trade Contracts"). Construction Manager shall develop Trade Bid Packages to ensure appropriate and complete coverage between bid packages for all work necessary to complete the Project, and avoid duplication of

any scope or portion thereof, or gaps between scopes that would leave work undone. Construction Manager shall inspect, review, provide a preliminary evaluation and assure proper assembly of the Contract Documents in coordination with the Architect prior to bidding. Construction Manager shall also minimize the likelihood of jurisdictional disputes, and ensure that proper coordination has been provided for phased construction. Construction Manager shall represent to District before bidding the work that recommended Trade Bid Packages include the full scope of work required by the Contract Documents and necessary to complete the Project, and will be required to guarantee completeness within the context of the Price (“Price”) and coordination of the scopes of work between all Trade Bid Packages.

1.1.7. Prequalification of Trade Contractors and Subcontractors. Construction Manager shall assist the District and Architect in prequalification. Construction Manager shall assist the District and its legal counsel in preparing prequalification documents as required under Public Contract Code section 20111.5 and/or 20111.6. If prequalification for the Project is required under Public Contract Code section 20111.6, and the Project requires work to be performed by mechanical, electrical or plumbing (“MEP”) contractors (contractors that require C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43 or C-46 licenses), the Construction Manager shall confirm that all such MEP subcontractors are prequalified. Construction Manager shall ensure that a list of prequalified MEP subcontractors will be made available by the District to all bidders at least five business days prior to the bid opening date. Construction Manager shall establish bidder prequalification procedures in compliance with the applicable statute, evaluate all prequalification documents submitted, make recommendations to the District on which contractors and/or subcontractors are deemed prequalified and issue notices to contractors and/or subcontractors regarding their prequalification status.

## **1.2. BID/AWARD SERVICES PHASE.**

Services to be provided by Construction Manager during the Bid/Award phase for the Project include, but are not limited to, providing responsible evaluation, documentation, recommendations and supervision of the following services: establishment of bidding procedures, generate bidder interest, preparation of legal advertisements, prepare and expedite final bid documents, conduct pre-bid conferences, coordinate bidder inquiries and issuance of addenda, provide bid evaluation and recommendations for award, purchase, delivery and storage of materials and equipment coordination, provide analysis of labor, conduct post-bid interviews, make post-bid value engineering recommendations, and coordinate post-bid contract document submittals.

1.2.1. Bidding Procedures. Construction Manager shall develop and expedite bidding procedures for bid document issuance for the phases of construction, including bid tracking and receipt of proposals with regard to each of the Trade Bid Packages. Construction Manager shall also take the necessary steps to administer any prequalification of potential contractors recommended by Construction Manager and accepted by the District, and ensure that all Trade Bid Packages are competitively bid, as required by Public Contract Code. A tabulation of bids for each bid package and phase of construction shall be submitted by Construction Manager to the District. Additionally, a post bid analysis summary for each phase of construction shall be submitted by Construction Manager listing only the low bidder for each bid package, their

contract amounts, contingencies, insurance and bond costs, Construction Manager's fee, general conditions and staff costs (as defined in Section 4.3) assigned to each bid phase, summed as a total committed cost of the work. Prequalification of Trade Contractors shall be pursuant to the Construction Manager's corporate policies as modified to meet the Public Contract Code. Costs for bid document reproduction shall be paid directly by the District.

1.2.2 Compliance with Applicable Laws and District Policies and Procedures. Construction Manager shall include in each Trade Bid Package and each Trade Contract all legal requirements for public works projects, including but not limited to the Trade Contractors' obligations to satisfy applicable fingerprinting requirements and all applicable policies and procedures of the District.

1.2.3. Bidder Interest. Construction Manager shall develop bidder interest in the Project and shall maintain contact with potential bidders for the Trade Contracts on a regular basis throughout the bid period. A telephone campaign shall be conducted by the Construction Manager to stimulate and maintain interest by the contracting community in bidding on the Project.

1.2.4. Bid Advertisements. Construction Manager shall prepare and coordinate the preparation and placement of the notices to bidders and advertisements to solicit bids for each of the Trade Bid Packages, as required by Public Contract Code in cooperation with District. Costs for advertisements shall be paid directly by the District.

1.2.5. Final Bid Documents. Construction Manager shall coordinate the preparation, assembly and delivery of the final bid documents and any addenda for each of the Trade Bid Packages to the prospective bidders including:

- (a) Establish bid-award-start schedule by trade;
- (b) Arrange for printing, binding and wrapping;
- (c) Arrange for delivery; and
- (d) Make follow-up calls to the prospective bidders.

Construction Manager shall include the following bidding and Contract Document requirements in all proposed Trade Bid Packages:

- (a) Notice to bidders, instructions to bidders, proposal form instructions, proposal form instructions, proposal form (including provisions for bid items for each phase and deductive/additive alternates for bonds and value engineering scopes of work), form of trade contract, guarantee form, performance and payment bond forms, general conditions, special provisions, scope of work, preliminary construction schedule, construction administrative procedures manual, trade contract assignment provision, escrow agreement for security deposits in lieu of retention, and general requirements (Division 1).
- (b) Applicable requirements for equal employment opportunity and Disabled Veteran Business Enterprise (DVBE) participation program requirements.

- (c) Requirements to comply with any and all applicable prevailing wage laws and contractor registration laws required by the California Labor Code, and any Labor Compliance Program instituted by or on behalf of District.
- (d) The following bonding requirements:
  - (i) Bid bond, cashier's check or certified check for 10% of the total amount of the bid, including additive alternates.
  - (ii) Performance bond at 100% of the contract amount (to be shown as a separate line item on the bid form for possible deduction).
  - (iii) Payment bond at 100% of the contract amount (to be shown as a separate line item on the bid form for possible deduction).
  - (iv) All bonds and insurance must be provided by a California admitted surety.
  - (v) Insurance in the amounts and coverages as directed by District prior to bid.

1.2.6. Pre-Bid Conference(s). In conjunction with the Architect, District and its consultants, Construction Manager shall conduct the mandatory pre-bid conference(s) and site visit meetings with prospective bidders. These conferences will be a forum for the Construction Manager, District, its consultants and Architect to present the Project requirements to the bidders, including prequalification requirements, as appropriate, and will familiarize bidders with the Project, bid documents, management techniques and with any special systems, materials or methods.

1.2.7. Bidder Inquiries. Construction Manager shall coordinate communications related to bidder inquiries and seek resolution to the questions from the appropriate party and provide timely forwarding of such information to the Architect for incorporation into the addenda for issuance to the prospective bidders, plan rooms, consultants and District.

1.2.8. Addenda Review. Construction Manager shall coordinate the addenda process with the Architect and District, and will provide a review of each addendum during the bid phase for completeness, time, cost, or constructability impact, and make appropriate comments.

1.2.9. [This section intentionally left blank.]

1.2.10. Bid Evaluation and Recommendation for Award. The Construction Manager, in cooperation with Architect, will assist District and its consultants in the bid opening, evaluation of the bids for completeness, scope compliance, responsiveness, responsibility, price, including alternate prices and unit prices, and will make a formal report to District with regard to the potential award of the Trade Contracts. The Construction Manager shall prepare bid tabulations, provide post analysis summaries and make recommendations to District for award of Trade

Contracts or rejection of bids. Construction Manager shall forward a copy of the proposed Trade Contract to the District for each bidder recommended by the Construction Manager. Construction Manager shall certify in writing that the number and breakdown of Trade Bid Packages for the Project represents all the work in the plans and specifications for the Project, and that no additional contracts are foreseen to complete the necessary work for the Project. In the event the Trade Contracts and any work deferred for the future does not represent 100% of the work, the additional necessary work will be offset as addressed in Article 3 upon the exhaustion of the Scope Interface Contingency.

1.2.11. Re-bidding. Construction Manager shall not allow individual Bid Package category re-bids except under one or more of the following circumstances:

- (a) If no bid is received in a category.
- (b) If the Project, after bids are received, is not within the Project Budget.
- (c) An insufficient number of bids have been received, which has resulted in an exorbitantly high bid in a category or creates reasonable uncertainty whether the low bid price is reasonable in consideration of the scope of the bid package .
- (d) As otherwise authorized by the District.

Should one or more of the aforementioned circumstances occur, then a category may be re-bid with only alteration to bid documents which are allowable by state agencies having jurisdiction over the Project (i.e. OPSC, SAB, DSA, etc.) and to which the Architect and District agrees.

The District may, in its sole discretion, reject all bids and require ALL packages for the entire Project to be re-bid.

In the event the bids exceed the Project Budget, or District authorizes re-bidding of all or portions of such Project, Construction Manager shall cooperate with the Architect in revising the scope and the quality of the work as required to reduce the construction costs for the Project. Construction Manager shall cooperate with District and Architect as necessary to bring construction costs within the Project Budget. Notwithstanding the foregoing, District is not obligated to authorize the re-bidding of all or any portions of the Project.

1.2.12. [This section intentionally left blank.]

1.2.13. Purchase, Delivery and Storage of Materials and Equipment. Construction Manager shall investigate and recommend a schedule for installation of District purchased materials and equipment which are a part of the Project and require long lead time procurement, and coordinate the schedule with the early preparation of portions of the contract documents. Construction Manager shall assist in expediting and coordinating delivery of all purchases. Construction Manager shall arrange for delivery, storage, and protection for District-purchased materials, systems and equipment, which are a part of the Project, until such items are



incorporated into the Project. Construction Manager shall coordinate with or assign these activities to the appropriate Trade Contractor who is responsible for the installation of such materials, systems, and equipment.

1.2.14. Analysis of Labor. Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.

1.2.15. Post-Bid Interviews. Construction Manager shall conduct post-bid interviews with the apparent low and second low bidders to determine completeness, scope compliance, responsiveness, responsibility, and price. Construction Manager shall identify any irregularities and bid protests and inform the District in writing of such items prior to the recommendation to award.

1.2.16. Post-Bid Value Engineering. Construction Manager shall evaluate the contract documents with the apparent low and second low bidders to make recommendations to the District and Architect for value engineering consideration.

1.2.17. Post-Bid Contract Document Submittals. Construction Manager shall coordinate the submission of all of its own as applicable, and Trade Contractor's post-bid contract document submittals, including but not limited to: payment bond, performance bond, local contact for surety, insurance certificates, name of superintendent/foreman, emergency contact names and phone numbers, name of safety supervisor, copy of safety manual, name of person authorized to sign documents, time and material (T&M) rates, list of Trade Contractors and suppliers, matrix of all required submittals, labor compliance forms, schedule of values, workers compensation affidavit, and Declaration of public works compliance. The Construction Manager shall ensure that all of the post-bid contract document submittals have been received, approved and found to be in good standing prior to forwarding them to the District, and prior to the start of construction.

### **1.3. CONSTRUCTION SERVICES PHASE.**

Services to be provided during the Construction phase for the Project include, but are not limited to, coordination of all activities that are included in the construction of the Project. Construction Manager shall be responsible for coordinating the work for the entire Project pursuant to the accepted Master Construction Schedule. As required in this Section, Construction Manager shall maintain communication with District and its consultants throughout the Construction Phase and shall provide responsible reporting and documentation prior to the contractors' Pre-Construction Conference (Section 1.3.1) and shall be responsible for coordinating the site construction services provisions (General Conditions items) including full-time supervision and administration of the Project, conducting coordination meetings, providing progress reports, processing contractors requests for information (RFI's), reviewing and recommending with the District, its consultants and Architect, the approval or disapproval of change orders, Construction Change Documents and progress payments to the Trade Contractors, and maintaining record keeping to assist District in negotiations, mediation, litigation, or arbitration of claims or disputes. Additionally, the Construction Manager shall

provide responsible evaluation, documentation, recommendations and supervision of the following services: coordination of technical inspection and testing; construction observation; reporting of non-conforming Work; make recommendations to District regarding exercising Contract prerogatives; safety program implementation; endorsements of insurance and performance/payment bonds review; monitor Project costs and review of schedule of values; construction progress review; maintain on-site Project record documents; processing of payments and development of the schedule of values; evaluate changes in the work; construction and scope interface contingencies management; provide change order reports; Trade Contractor claims review; administer storm water pollution prevention plan; submission of operation and maintenance manuals, guarantees and releases; completion of Trade Contracts and Project; coordinate staff training, assist with move-in activities, commissioning (where stated in Contract Documents), initial start-up and testing; and coordinate the final completion, close-out documents and project report for the Project.

1.3.1. Pre-Construction Conference(s). Construction Manager will conduct, in conjunction with District, its consultants and the Architect, pre-construction orientation conference(s) for the benefit of the successful bidding Trade Contractors and will serve to orient the Trade Contractors to the schedule, supervision, contract administration, safety, DIR registration requirements, prequalification requirements, prevailing wage requirements, and various reporting procedures and site rules prior to the commencement of actual construction.

1.3.2. Contract Administration. Construction Manager, in cooperation with the District, its consultants and Architect, will administer the Trade Contracts as set forth herein and as provided in the General Conditions of the Trade Contracts for construction. Construction Manager shall assist the District, its consultants and the Architect with Construction Administration (“CA”) activities and document control for the Project. Construction Manager shall set up and maintain a computerized CA database to track CA related functions, which is subject to acceptance by the District, its consultants and Architect, which will not be unreasonably withheld. Construction Manager shall coordinate the preparation of the construction staging areas on-site for the Project and shall coordinate the preparation of the site for construction, including, but not limited to, temporary fencing, all temporary utilities, job trailers, storage bins, barricades or other items reasonably necessary for efficient construction. Construction Manager shall coordinate the mobilization of all Trade Contractors and shall coordinate construction sequencing.

In addition, Construction Manager shall provide management and related services as required to coordinate work of the Trade Contractors with each other and the activities and responsibilities of the Architect, District, and its consultants in order to complete the Project in accordance with the Construction Documents and this Agreement. Construction Manager shall provide sufficient organization, qualified and experienced personnel and management to carry out the requirements of this Agreement. Construction Manager shall maintain competent full-time staff at all times, with supervisory responsibilities for the Project site for the purpose of coordinating and providing direction for the work and progress of the Trade Contractors.

1.3.3. Submission Procedures. Construction Manager shall establish and implement submission procedures with the District, its consultants and the Architect. Construction Manager

shall establish a submittal priority matrix, provide a preliminary review of all submittals, and coordinate and review shop drawing submissions, and provide coordination and submission of requests for information (RFIs), samples, mock-ups, product data, change orders, Construction Change Documents, payment requests, material delivery dates and other procedures; and maintain logs, files and other necessary documentation. Construction Manager shall coordinate the dissemination of any information regarding the submissions.

1.3.4. Coordination Meetings. Construction Manager shall coordinate and conduct preconstruction, construction coordination, safety, and weekly job-site progress meetings with the Trade Contractors, and shall publish and distribute meeting minutes to all attendees, District, its consultants, Architect and all other appropriate parties. Construction Manager shall attend bi-weekly progress meetings with the District, its consultants and the Architect. Construction Manager shall assist in the resolution of any technical construction issues, and coordinate with District and District's consultants to address issues raised by local and state agencies, and endeavor to ensure compliance with the laws, rules and regulations applicable to the Project.

1.3.5. Coordination of Technical Inspection and Testing. Construction Manager shall coordinate with the District's Division of the State Architect (DSA) certified project inspector, all ongoing inspection and special testing and inspection required by the Architect, Contract Documents, agencies, or other third parties. If requested, Construction Manager shall assist District in selecting any special consultants or testing laboratories. All inspection reports provided to the District will be provided to the Construction Manager on a regular basis. Construction Manager shall analyze the special testing and inspection reports and advise the District of the results and provide appropriate recommendations when there are any deficiencies noted.

1.3.6. Construction Observation. Construction Manager will assist District's project inspector in observing that the materials and equipment being incorporated into the work are handled, stored and installed properly and adequately and are in compliance with the Contract Documents for the Project. Construction Manager shall report to District regarding the status of such activity. Construction Manager shall endeavor to guard against defects and deficiencies and shall advise District of any deviations, defects or deficiencies Construction Manager observes in the work. The Construction Manager's observation duties shall include reasonable diligence to discover work that is not in compliance with the Project's Contract Documents.

1.3.7. Non-Conforming Work. Construction Manager will, in conjunction with District's project inspector, review Trade Contractor's recommendations for corrective action and make appropriate recommendations on observed non-conforming work. Construction Manager will make recommendations to District, its consultants, the Architect and District's project inspector in instances where Construction Manager observes work that, in its opinion, is defective or not in conformity with the Contract Documents. Construction Manager shall assist District's project inspector in observing the Trade Contractor work to verify that all authorized corrections and/or changes are properly incorporated into the Project. Construction Manager shall report to District regarding the status of such activity and provide a written record of the same.

1.3.8. Project Inspection Card Requirements. The Construction Manager shall establish a procedure to verify that the Trade Contractors are performing services in compliance with the “Construction Oversight Process Procedure” required by the California Code of Regulations, Title 24 and as further described in DSA’s PR 13-01, PR 13-02 and any other related documents and subsequent updates to such documents. As part of the procedure established under this Section, Construction Manager must be able to verify that all verified reports are being submitted to the DSA by the responsible parties in a timely manner. As part of the monthly reporting process, Construction Manager shall notify the District when a Trade Contractor has failed to comply with the Construction Oversight Process Procedure and must inform the District of the impact such failure will have upon the Project and the Project Schedule. The Construction Manager shall review the DSA approved Statement of Structural Tests and Special Inspections (Form DSA 103) for the Project prior to the commencement of any work on the Project in order to become familiar with the all testing and inspections that are required for the completion of the Project. The Construction Manager shall meet with the Architect, Project Inspector, District, Trade Contractors, Laboratory of Record and Special Inspectors as needed throughout the construction and completion of the Project to verify, acknowledge and coordinate the testing and special inspection program required by the DSA approved Construction Documents. The Construction Manager shall coordinate with the Trade Contractors to ensure timely requests for inspections are made and that the requirements related to the DSA’s Inspection Card Process and Form DSA 152 are being met for the Project. The Construction Manager shall notify the District, in writing, when delays or impacts to the Project Schedule are being caused by a party not complying with DSA’s Inspection Card requirements and Form DSA 152. After the Project has been let, all changes to the DSA approved Construction Documents shall be made by means of a Construction Change Document (“CCD”) prepared by the Architect in conjunction with the Construction Manager. The Construction Manager shall review all CCD’s related to the Project to determine which changes affect the Structural, Access or Fire & Life Safety (collectively “SAFLS”) portions of the Project and verify that such changes are documented and implemented by the Architect through a written CCD-Category A (Form DSA 140). The Construction Manager shall verify that all CCD-Category A’s are submitted to the DSA by the Architect with all supporting documentation and data and that such CCD’s are approved by the DSA before work commences on the Project related to such CCD’s. The Construction Manager shall verify that the District has reviewed and approved of all CCD-Category A’s before they are submitted to the DSA for review and approval. All other changes to the DSA approved Construction Documents not involving SAFLS portions of the Project are not required to be submitted to the DSA unless the DSA specifically requires such changes to be submitted to the DSA in the form of a written CCD-Category B (Form DSA 141) inclusive of all supporting documentation and data. The Construction Manager shall verify that all CCD-Category B’s are submitted to the DSA with all supporting documentation and data and that such CCD’s are approved by the DSA before work commences on the Project related to such CCD’s. Changes that are not determined by the Architect and/or DSA to require documentation through an approved CCD-Category A or CCD-Category B shall be documented by the Architect and Construction Manager through an alternative CCD form or other document approved by the District. The Construction Manager shall coordinate with the Project Inspector, Architect, the Architect’s consultants, Special Inspector(s), Laboratory of Record and any other engineers on the Project to verify that all Trade Contractor verified reports are timely submitted to the DSA and the District throughout the completion of the Project and prior to the Project Inspector’s approval and sign off of any of the

following sections on all the Project Inspection Cards (Form DSA 152) required for the construction of the Project: (1) Initial Site Work; (2) Foundation; (3) Vertical Framing; (4) Horizontal Framing; (5) Appurtenances; (6) Non-Building Site Structures; (7) Finish Site Work; (8) Other Work; or (9) Final.

1.3.9. Master Construction Schedule. Construction Manager shall develop and implement a Critical Path Method Master Construction Schedule (the “Master Construction Schedule”) based upon the milestones established in the District’s preliminary project schedule and preliminary master construction schedule, and input received from the Trade Contractors. Construction Manager shall maintain and update the Master Construction Schedule on a monthly basis for acceptance by the District, and if necessary to maintain timely progress of the work according to the Master Construction Schedule, prepare bi-weekly short interval schedules, and distribute all schedules to the District, Architect, and other appropriate parties.

1.3.10. Safety Program Implementation. To the extent required by the Occupational Safety & Health Administration (“OSHA”) or any other public agency, Construction Manager shall develop and implement the Project’s safety program for all personnel on the project site, and monitor the implementation along with the coordination of all required and necessary safety meetings. Upon assignment of a Trade Contract to Construction Manager, Construction Manager shall be responsible for the completion of such Trade Contract and will ensure that all such safety programs are submitted to District. Copies of all safety meeting notes or minutes, attendees and reports shall be forwarded to the District.

1.3.11. Endorsements of Insurance, and Performance and Payment Bonds. Construction Manager shall receive, review and comment on the Endorsements of Insurance, and Performance and Payment Bonds from the Trade Contractors when required and forward them to District with a copy to the Architect prior to commencement of any work by such Trade Contractors.

1.3.12. Monitoring Project Costs and Review of Schedule of Values. Construction Manager shall provide regular monitoring of the Project Budget, showing actual costs for activities in progress and estimates for uncompleted tasks for each phase of the Project. Construction Manager shall identify variances between actual and budgeted or estimated costs and advise District and the Architect whenever the actual costs for activities in progress and estimates for uncompleted tasks exceed the Project Budget and/or the Price as defined under Article 3. Construction Manager shall review and approve each Trade Contractor’s schedule of values for each of the activities included in that Trade Contractor’s schedule of values prior to submission of each month’s payment application to the District.

1.3.13. Construction Progress Review. Construction Manager shall keep a daily log containing a record of weather, the Trade Contractors working on the site, number of workers, work accomplished, equipment on site, visitors to the site, problems encountered, resolutions to past problems noted and other relevant data or such additional data as District may require. Construction Manager shall distribute copies of the log(s) to the District on a monthly basis. Construction Manager shall prepare and distribute the construction schedule updates to the Master Construction Schedule on a monthly basis for comparison, and Construction Manager shall incorporate the updates into and maintain the District’s master project schedule. After an

evaluation of the actual progress as observed by Construction Manager, scheduled activities will be assigned percentage-complete values. The report will reflect actual progress as compared to scheduled progress (baseline), and will note any variances. Construction Manager shall identify problems encountered in accomplishing the work and recommend appropriate action to District to resolve these problems with a minimum effect on the timely completion of the Project. Construction Manager shall develop and impose an appropriate recovery schedule on the Trade Contractor(s), which is acceptable to the District. The recovery schedule will reflect the corrective action costs (if any) and efforts to be undertaken by the Trade Contractor(s) to recapture lost time. This recovery schedule will be distributed to the Trade Contractor(s), District and its consultants, Architect and other appropriate parties.

1.3.14. Maintain On-Site Project Record Documents. Construction Manager shall implement and maintain a comprehensive project records document management program. Construction Manager shall maintain at the Project site, on a current basis: a record copy of all Trade Contracts, drawings, specifications, addenda, change orders, CCD's, and other modifications, in good order, and drawings and specifications marked to record all changes (as-builts) made during construction on a monthly basis; shop drawings; product data; manufacturers installation instructions; operation and maintenance manuals; warranties; samples; submissions; purchases; materials; equipment; applicable handbooks (when needed); Title 24 of the California Code of Regulations; The California Uniform Building Code; other related documents and revisions which arise out of the Trade Contracts. In addition, Construction Manager shall maintain records in duplicate, of concrete pours, principal building layout lines, elevations for the bottom of footings, floor elevation levels and key site elevations and benchmarks certified by a qualified surveyor or professional engineer, if necessary. The Construction Manager shall make available all Project progress record documents to the District for review on a monthly basis. At the completion of the Project, Construction Manager shall deliver all such records to the Architect, so the Architect may complete the record of as-built drawings.

1.3.15. Processing of Payments and Schedule of Values. Construction Manager shall develop the schedule of values for the Project and implement procedures for the review, reconciliation and processing of payment applications for progress and final payments. Construction Manager shall review and prepare the master monthly payment application based on percentages of work completed by the trades and the Construction Manager's compensation. Upon approval by the District, Architect and project inspector, it will be forwarded to the District for processing.

1.3.16. Evaluate Changes in the Work. Construction Manager shall assist the District and its consultants with reviewing potential changes in the work; establish and implement a change order processing system that provides for the review and analysis of potential changes in Project scope, and make recommendations to the District regarding any changes in Contract Sum and/or Contract Time. Construction Manager shall secure authorization from the District on all proposed changes prior to Construction Manager directing the Trade Contractors to begin the work. Construction Manager shall coordinate the processing of all change orders and CCD's with the Architect, DSA, and the District's Governing Board.

1.3.17. Construction and Scope Interface Contingencies. Within the Project Budget the District shall maintain and control the Project's Construction Contingency and the Scope Interface Contingency.

The Construction Contingency can be used for documented construction-related changes, but prior to District authorization, proposed change orders ("PCO") shall be classified and tracked in one or more of the following categories: design errors, design omissions, unforeseen site conditions, agency related changes/requirements and owner initiated changes.

The Scope Interface Contingency can only be used for scope(s) of work required to complete the Project shown in the Contract Documents, but left undefined between the Bid Package descriptions. The undefined scope shall be quantified, priced and presented to the District for approval before awarding the work to a trade. Conversely, if scope(s) of work required to complete the Project shown in the Contract Documents have been shown in two or more Bid Package descriptions, a deductive change order shall be written that represents the amount of work "doubled up," which shall be placed back into the Scope Interface Contingency account.

At the conclusion of the Project, all unused portions of the Construction Contingency shall be returned to the District via deductive Change Order. All unused portions of the Scope Interface Contingency shall be released to the Construction Manager by the District.

1.3.18. Change Order Reports. Construction Manager shall not issue instructions to Trade Contractors for changes in the work which are contrary to the District and Architect's approval. Any such communication between the Construction Manager and the Trade Contractors shall not in any way be construed as binding on District. Construction Manager shall prepare and distribute change order reports on a monthly basis throughout the Construction Services Phase. This report will provide information pertaining to proposed and executed change orders and their effect on the Price and Master Construction Schedule as of the date of the report.

1.3.19. Trade Contractor Claims. Construction Manager shall be given copies of all notices of claims made by Trade Contractors for any alleged cause. All claims submitted by Trade Contractors to the Construction Manager shall be accompanied by a claim certification, pursuant to the California False Claims Act, Government Code sections 12650, et seq. Construction Manager acknowledges that it has read and is familiar with the provisions of the False Claims Act (California Gov. Code §12650 et seq.). Submission by Construction Manager of any claim (as the term "claim" is defined in False Claims Act) to the District in connection with the Project, whether on its behalf or on behalf of a Trade Contractor or material supplier, shall constitute a representation by Construction Manager to the District that submission of the claim does not, to Construction Manager's knowledge, violate the False Claims Act. Any party with an interest in the claim, including the Construction Manager, Trade Contractor and/or any material supplier, shall certify under penalty of perjury the validity and accuracy of any claim submitted to the District. Compliance with this claims certification requirement shall be a condition precedent to any obligation District might otherwise have to review the claim, and failure to provide such certification shall constitute a waiver of the claim. Excepting those claims for which Construction Manager is responsible, Construction Manager's obligations pursuant to

this section shall cease upon completion of the Project as defined in Section 1.1.2 of this Agreement. Excepting those claims for which Construction Manager is responsible, the services to be provided pursuant to this Section do not include the providing of outside consultants or outside claims analysis.

1.3.20. Storm Water Pollution Prevention Plan. Construction Manager shall ensure that a storm water pollution prevention plan is initiated, maintained and enforced in accordance with all regulations, local ordinances and agencies, throughout duration of the Project.

1.3.21. Operation and Maintenance Manuals, Guarantees and Releases. Construction Manager will obtain all materials such as manufacturer's installation instructions, and operation and maintenance manuals, warranties, affidavits, releases, bonds, waivers and guarantees for each Trade Contractor's work, materials and equipment. All such materials shall be professionally bound, and extra stock, keys, and commissioning documents (where required) shall be submitted to appropriate District personnel. The Construction Manager is responsible for all guarantees for the minimum base one (1) year guarantee period. The material and equipment guarantees extended beyond the minimum base guarantee period shall be the responsibility of the District to manage.

1.3.22. Completion of Trade Contracts and Project. When Construction Manager considers each Trade Contractor's work or a designated portion thereof complete, Construction Manager shall prepare for the Trade Contractor a list of incomplete or unsatisfactory items (the Pre-Punch List) and a schedule for their completion.

Construction Manager shall coordinate the correction and completion of the punch list work. Construction Manager shall assist the Architect in conducting inspections and punch list development, and shall assist the Architect in determining when the Project or a designated portion thereof is complete. Construction Manager shall prepare a summary of the status of the punch list work of each Trade Contractor, listing signed-off items in the previously-issued punch list and recommending the times within which Trade Contractors shall complete the uncompleted items on the punch list.

1.3.23. As-Built Documents. Construction Manager shall perform coordination, supervisory and expediting functions in connection with the Trade Contractor's obligation to provide "as-built" documents on a monthly basis. If as-built information of an acceptable quality is not provided by any of the Trade Contractors, the District may withhold payments from the master monthly payment application.

1.3.24. Staff Training, Move-in and Commissioning. Construction Manager shall coordinate move-in activities with District personnel, and schedule staff training for all mechanical equipment and electrical systems. Construction Manager shall assist the District's Maintenance & Operations department with equipment and "system" start-up, testing and commissioning (where required). Construction Manager will ensure that the Trade Contractors provide the requisite start-up, training and commissioning (where required), as required in the Contract Documents.



1.3.25. Recommendations to District. Construction Manager shall endeavor to achieve satisfactory performance from each Trade Contractor. Construction Manager shall recommend courses of action to District when requirements of the Contract Documents or a Trade Contract are not being fulfilled, and when the non-performing party will not take satisfactory corrective action. After assignment of a Trade Contract by District to Construction Manager, the Trade Contractor's performance is Construction Manager's responsibility.

1.3.26. Accounting Records. Construction Manager shall establish and administer the Project accounting system in conjunction with District and shall maintain cost accounting records on authorized work performed under unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.

1.3.27. Permits. Construction Manager shall assist the Architect and District in obtaining all necessary local agency utility and encroachment permits for the Project, the responsibility for securing the permits resting on District and its Architect notwithstanding. This task may also encompass accompanying governmental officials (Fire Marshal, DSA, Health Department, local building department and fire authority, etc.) during inspections, assisting in preparing and submitting proper documentation to the appropriate approving agencies, assisting in final testing and fulfilling other necessary regulations.

1.3.28. Initial Start-up and Testing. With the Architect and District's maintenance personnel, Construction Manager shall coordinate and observe the Trade Contractors' check-out of utilities, operational systems and equipment for readiness and assist in their initial start-up and testing for the Project.

1.3.29. Professional Consultants. Construction Manager shall assist District, if requested, to provide input in selecting and retaining the professional services of surveyors, special consultants, testing laboratories and others as necessary, and coordinate their services.

1.3.30. Final Completion, Closeout Documents and Project Report. Construction Manager, in conjunction with the District and its consultants, Architect and project inspector, will at the conclusion of all corrective action of punch list items, make a final comprehensive review of the Project, make a report to District which will indicate whether Construction Manager and the Architect find the work performed acceptable under the Contract Documents and the relevant Project data, and make recommendations as to final payment to the Trade Contractor(s) and the notice of completion for the Project. Construction Manager shall also process and forward all final verified reports and required Project closeout documents to the Architect for submission to DSA. At the conclusion of the Project, Construction Manager shall prepare and submit all required final Project accounting and closeout reports.

#### **1.4. TIME.**

1.4.1. Construction Manager shall perform the services set forth in this Agreement as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Project.

1.4.2. Liquidated Damages. In the event the construction time requirements set forth in this contract are exceeded, the Construction Manager's fee shall be reduced by an amount of \$5,000.00 per calendar day as liquidated damages, but not as a penalty, starting from the scheduled completion date for the Project until the construction of the Project is substantially complete. In the event the construction time requirements set forth in any Trade Contract are exceeded, the Construction Manager's fee shall be reduced by an amount of \$5,000.00 per calendar day as liquidated damages, but not as a penalty, starting forty five (45) calendar days after the scheduled completion date for the Trade Contract until the Trade Contract is complete. The payment of liquidated damages shall be the remedy for damages based upon inexcusable delays. The foregoing shall not apply until and unless the Trade Contracts are assigned by District to Construction Manager. Absent such assignment, Construction Manager shall have no liability for delayed completion of any Trade Contract or the Project, except as directly resulting from Construction Manager's performance of services required in the absence of assignment of the Trade Contracts.

1.4.3. Should the schedule for the Project be extended beyond the Master Construction Schedule due to delays which are not attributable to Construction Manager, including any delays arising from an Act of God as defined in Public Contract Code Section 7105, and which are beyond the contemplation or control of Construction Manager, Construction Manager's contract shall be extended and Construction Manager shall be compensated for this extension under Section 4.8 of this Agreement. Such delay will not reduce the agreed to and available contingencies.

#### **ARTICLE 2: THE DISTRICT'S RESPONSIBILITIES.**

2.1. District shall provide reasonably complete information regarding the requirements of the Project, which shall set forth District's objectives, constraints and criteria.

2.2. District shall designate a representative ("District Representative") to act on District's behalf with respect to the Project. District or District Representative shall render decisions promptly to avoid unnecessary and unreasonable delay in the progress of Construction Manager's services. As District's Representative, District shall appoint the Superintendent or Superintendent's Designee.

2.3. District shall furnish tests, inspections and reports as required by law or the contract documents.

2.4. The services, information and reports required by Paragraphs 2.1 through 2.3, inclusive, shall be furnished at District's expense.

2.5. District reserves the right to perform work related to the Project with District's own forces and/or to award contracts in connection with the Project. Construction Manager shall notify District in writing within ten (10) calendar days after Construction Manager becomes aware if any such independent action will in any way compromise Construction Manager's ability to meet Construction Manager's responsibilities under this Agreement. If District's own forces cause delay, Construction Manager will be entitled to claim an adjustment in both contract time and cost.

### **ARTICLE 3: PRICE**

3.1. Price Proposal. Within twenty one (21) calendar days, or as soon as practicable, after all of the Trade Bid Packages are competitively bid and opened pursuant to Article 1.2 of this Agreement, Construction Manager shall propose a Price for the Project which shall include all of the Project Costs as set forth in Section 1.1.3 of this Agreement ("Price Proposal"). Construction Manager shall include with the Price Proposal a written statement of its basis, which shall include:

- (a) A list of the drawings and specifications for the Project including all addenda thereto and the conditions of the Trade Contracts which were used in preparation of the Price Proposal ("Drawings and Specifications").
- (b) A list of allowances and a statement of their basis.
- (c) A list of the clarifications and assumptions made by Construction Manager in the preparation of the Price Proposal to supplement the information contained in the Drawings and Specifications.
- (d) The proposed Price, including a statement of the estimated cost organized by trade categories, allowances, contingencies, and other items and the fee that comprise the Price as set forth in Section 1.1.3 of this Agreement.
- (e) The date of final completion and an updated Master Construction Schedule upon which the date of final completion is based.
- (f) An updated Project Budget based upon the Price.

3.2. Review of Proposal. Within five (5) calendar days of Construction Manager's submission of the Price Proposal, or such time period as directed by District, Construction Manager shall meet with District, its consultants and Architect to review the Price Proposal and the written statement of its basis. At such meeting, District shall discuss with Construction Manager any inconsistencies or inaccuracies with respect to the Price Proposal or the written statement of its basis and both parties shall endeavor to reconcile such inconsistencies or inaccuracies to the satisfaction of both parties.

3.3. Compensation Prior to Acceptance of Proposal. Except as provided for in Section 4.1 of this Agreement, Construction Manager shall not be entitled to any compensation or reimbursement until District accepts the Price Proposal.

3.4. Non-acceptance of Proposal. Unless District accepts the Price Proposal in writing within fifteen (15) calendar days of District's receipt of the Price Proposal, or such longer period as may be agreed by Construction Manager and District in writing, the Price Proposal shall not be effective and this Agreement shall automatically cancel and be deemed null and void between the District and Construction Manager and, as such, the Construction Manager shall not be entitled to any compensation except as provided for in Section 4.1 of this Agreement.

3.5. Acceptance of Proposal. Upon acceptance by District of the Price Proposal, District and Construction Manager agree to the following:

- (a) The Price and its basis shall be set forth as an Amendment to this Agreement.
- (b) District shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in above Amendment. Such revised Drawings and Specifications shall be furnished to Construction Manager in accordance with schedules agreed to by District, Architect and Construction Manager. Construction Manager shall promptly notify the Architect and District if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.
- (c) The Project Costs shall not to exceed the Price as adjusted by change orders in accordance with Section 3.11.3 of this Agreement. In the event that the Project Costs exceed the Price, as adjusted by change orders in accordance with Section 3.11.3 of this Agreement, Construction Manager shall immediately pay such costs to whomever such costs are due without reimbursement by District. In the event that the Project Costs exceed the Price as adjusted by change orders in accordance with Section 3.11.3 of this Agreement and District has paid any costs in excess of the Price, as adjusted by change orders in accordance with Section 3.11.3 of this Agreement, Construction Manager shall reimburse District, within thirty (30) calendar days of invoice by District, for any amounts paid by District in excess of the Price. The Price is for the total amount, and is not to be considered guaranteeing any individual line item.

3.6. Single Price Contract. A separate Price will not be established for each phase of the Project if multiple phases are used. The costs for each phase of the Project (upon approval of District) will be broken out separately and then included in a single Price contract between Construction Manager and District.

3.7. Initial Price. The initial Price will be determined at the completion of the initial bidding for each phase of the Project if multiple phases are used. The initial Price shall be calculated using the same format, as specified in Section 3.1.

3.8. Contingency Funds. The Construction Contingency and Scope Interface Contingency Funds within the Price will be utilized to fund issues consistent with provisions contained in Section 1.3.17.

Contingency Funds within the Price may be utilized as directed by the District per Section 1.3.17. All funds utilized for these matters shall be specified and agreed upon by both District and Construction Manager. In the event the remaining Contingency Funds have been exhausted, Construction Manager shall bear the expense to complete the work unless otherwise provided within this Article 3 or the Contract Documents.

3.9. Provisional Allowances within Price. Construction Manager will identify and prepare a list of Provisional Allowances when required. Provisional Allowances are to be established to adjust for variances due to bid environment irregularities or lack of bid coverage for specific Trade Bid Packages. If the total bids received do not exceed the Project Budget, then application of variances based on Provisional Allowances shall be at the discretion of Construction Manager unless agreed to otherwise with District. If total bids exceed the Project Budget but are less than one hundred and ten percent (110%) of the Project Budget then adjustments shall be mutually agreed upon between Construction Manager and District. The Total of Bids received and adjustments based on Provisional Allowances shall not exceed the Price.

3.10. Agreed Project Budget as Basis for Price and Provisional Adjustments. The Project Budget set forth in Article 1.1.3 shall be established prior to opening of bids, and finalized within ten (10) calendar days of execution of this Agreement.

3.11. Items Carried Outside of the Price. Subsequent Phases, Additional Work, Educational Program Changes, and Change Orders as Defined in Article 3.11.3 shall be carried outside of the Price.

3.11.1. Subsequent Phases/Additional Preconstruction and Bid/Award Services Work. Subsequent phases and/or additions of work to the Price will include an appropriate adjustment to Construction Manager's fee as set forth in Section 4.8. The costs and Construction Manager's fee for preconstruction and bid/award services shall be fixed and agreed upon in writing, as a fixed lump sum amount, which costs and fees shall be included in the Price and paid in accordance with Article 4 below.

3.11.2. [This Section is intentionally left blank.]

3.11.3. Change Orders. Construction Manager shall not be responsible for any costs relating to any of the following types of change orders and such costs shall not be factored into the Price as long as such change orders are not the result of Construction Manager's negligence, error or omission with respect to Construction Managers' duties related to the Project:

- (a) Change orders consistent with the policy of the State Allocation Board or approved and funded by the Office of Public School Construction;

- (b) Change orders initiated by District or DSA;
- (c) Change orders relating to subsurface conditions if such condition is an unknown physical condition at the Project Site, or different materially from those identified in the Contract Documents as long as Construction Manager gives District thirty (30) days written notice from discovery of the unknown physical condition and prior to any additional work relating to the previously unknown physical condition;
- (d) Change orders relating to errors, omissions, inconsistencies, and conflicting information in the Construction Documents; and,
- (e) Change Orders arising from State and/or local agency required changes that were unknown or unforeseen by the Architect.

3.11.4. Change Order Budgets. Construction Manager shall, contemporaneous with establishing the Price, propose anticipated budgets for the items addressed in Articles 3.11.1, 3.11.2, and 3.11.3 to be carried outside of the Price by District.

#### **ARTICLE 4: BASIS OF COMPENSATION AND PAYMENT.**

District shall compensate Construction Manager for the services required hereunder, as follows:

4.1. Preconstruction and Bid/Award Services Phase. Construction Manager shall be compensated on a Fixed Fee basis in the amount of [REDACTED] Dollars (\$ [REDACTED].00), which covers [INSERT NUMBER OF MONTHS] months, which, upon acceptance of Construction Manager's Price Proposal, shall be included in the Price.

4.1.1. Payment – Preconstruction and Bid/Award Services Fixed Fee. District shall pay Construction Manager the Fixed Fee for Preconstruction and Bid/Award Services in [INSERT NUMBER] equal monthly payments each within twenty-five (25) days of the receipt of an invoice from the Construction Manager. The agreed to hourly personnel rates are listed in Section 4.1.2, shall apply to any additional services directed by the District and shall not be subject to additional Construction Manager's fees or multipliers. Invoices shall be broken down in detail and include supporting back-up documentation prior to the District's approval and payment.

4.1.2. RESERVED.

4.2. RESERVED.

4.3. General Conditions. General Conditions of the Project are defined as those generic support activities which must be in place to support all construction aspects of the Project. These include, but are not limited to, such items as mobilization, office rental, computer equipment and

furnishings, , dumpsters, , Construction Manager's staff costs and employee expenses, vehicles, safety, fuel, equipment, supplies, telephone, telephone equipment installation and services, fax, fax machine equipment and services, copy machine, mobile communication on site (two-way radio), cellular phone(s), cellular phone(s) service, and all site office supplies, postage, delivery services and miscellaneous general expenses. Construction Manager shall be compensated a fixed sum totaling \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00) as set forth in in **Exhibit A** and detailed **Exhibit C** attached hereto this Agreement, which amounts shall be included and paid on Construction Manager's monthly invoices, as outlined below.

4.3.1. Payment of General Conditions. District shall pay Construction Manager the fixed sum detailed in Section 4.3 above in equal monthly installments, without retention, within twenty-five (25) days of the receipt of the invoice from the Construction Manager until the fixed sum detailed in Section 4.3 above is exhausted. The fixed General Conditions costs payable to the Construction Manager above are based upon the detailed budget set forth in Section 4.3.2 below and no other General Conditions shall be due and owing to Construction Manager unless approved by the District in writing.

4.3.2. General Conditions Expense Budget. **See Exhibit C** for General Conditions Expense Budget applicable to this Agreement.

4.4. Insurance. Construction Manager shall purchase and maintain insurance, which must be in place for the duration of the Project. Insurance coverage includes, but is not limited to, comprehensive general liability, comprehensive automobile liability, excess commercial liability/umbrella, workers' compensation, and builder's risk insurance (if applicable). Construction Manager shall be compensated for the cost of the insurance plus Construction Manager's fee.

4.4.1. Payment – Insurance. District shall pay Construction Manager, without retention, within twenty five (25) days of the District's receipt of the invoice from the Construction Manager reflecting the agreed upon insurance costs based on the stipulated rates agreed upon by Construction Manager and District expended within the billing period.

4.5. Contingency Funds. The Scope Interface Contingency Funds will be utilized to fund issues consistent with provisions contained in Section 1.3.17.

4.5.1. Payment – Contingency Funds. Construction Manager shall submit to the District all recommended fund transfers to the Trade Contractors as a result of changes in the work, per Section 1.3.16 and 1.3.17, which Construction Manager and District decide should be funded from the Contingency Fund as described in Section 3.8. District shall approve fund transfers to the Construction Manager, which District reasonably decides are in accordance with the permitted use under section 1.3.17. The Contingency Funds are based on budgets, per Section 4.5.2. Invoices shall be broken down in detail and include supporting back-up documentation. At the conclusion of the Project, all unused portions of the Construction Contingency shall be compensated to the contractor.

4.5.2. Contingency Funds Budget (**Per exhibit A**).

Fund	Budget
Construction Contingency	\$ <span style="background-color: yellow;">                    </span>
Scope Interface Contingency	\$ <span style="background-color: yellow;">                    </span>
Total Budget	\$ <span style="background-color: yellow;">                    </span>

4.6. Trade Contracts. The Trade Contracts will be assigned to the Construction Manager by the District at or before the conclusion of the preconstruction services phase of the Project. Construction Manager shall be compensated in a lump sum amount based on the aggregate total of all Trade Contracts, plus Construction Manager’s fee as detailed in **Exhibit A** to this Agreement.

4.6.1. Payment – Trade Contracts. District shall pay Construction Manager undisputed amounts within twenty-five (25) days of the receipt of the approved master monthly payment application from the Construction Manager for the Trade Contractor’s work performed during each month of the Construction Services Phase, less 5% retention. With District approval, consideration for early reduction and release of retention (or portion thereof) may be granted.

4.7. Final Payment. Construction Manager shall invoice the final amount of the Construction Manager’s compensation thirty-five (35) calendar days after District records the notice of completion for the Project or thirty-five (35) calendar days after completion of the Project as defined in Public Contract Code Section 7107, whichever is earlier.

4.7.1. District shall make payments of undisputed amounts to Construction Manager within twenty-five (25) calendar days of receipt of the approved master monthly payment application from Construction Manager. With respect to Final Payment, if the Project Costs exceed the Price, or if it appears that the Project Costs may exceed the Price, District may withhold from the Final Payment the difference between the Project Costs (or the projected Project Costs) and the Price. Upon completion of the Project, District shall make payment of any undisputed withheld amounts as long as such amounts are within the Price.

If Construction Manager accepts the assignment pursuant to Article 13, District shall make the payments for each assigned contract as set forth in Section 13.2 of this Agreement.

4.8. Additional Compensation. Construction Manager shall not be entitled to additional compensation for additional services unless there are unusual and unanticipated circumstances and only when approved in writing by District, in advance of such services being provided. If Construction Manager shall claim compensation for any damage sustained by reason of the acts of District or its agents, Construction Manager shall, within ten (10) calendar days after sustaining such damage, submit written notice to District with a written statement of the damage sustained. On or before the 15th day of the month succeeding that in which such damage shall have been sustained, Construction Manager shall file with District an itemized statement of the details and amount of such damage in accordance with this Article, and unless such statement is submitted, any claims by Construction Manager shall be forfeited and invalidated and



Construction Manager shall not be entitled to consideration for payment on account of any such damage. In the event additional compensation is approved, additional compensation shall be based on the actual hourly work performed within the billing period and shall be calculated using the hourly personnel rates listed in Section 4.8.1. Such additional compensation shall not be subject to additional Construction Manager's fees. Invoices shall be broken down in detail and include appropriate supporting back-up documentation.

4.8.1. Hourly Rates for Additional Compensation. Hourly rates for additional compensation for Additional Services have been attached hereto and are incorporated herein this Agreement as **Exhibit D**.

**ARTICLE 5: This Article is intentionally left blank.**

**ARTICLE 6: TERMINATION, ABANDONMENT OR SUSPENSION OF WORK.**

6.1. Termination of Construction Manager Services. District may give seven (7) calendar days' written notice to Construction Manager of District's intent to suspend or terminate Construction Manager's services for cause under this Agreement for failure to satisfactorily perform or provide prompt, efficient or thorough service, or Construction Manager's failure to complete its services or otherwise comply with the terms of this Agreement. If after the expiration of such seven (7) calendar days, Construction Manager fails to cure the performance as set forth in the District's Notice of Intent to terminate the Construction Manager's services, District may issue a Notice of Termination. At that time, Construction Manager's services shall be terminated as set forth in the District's Notice of termination.

District shall also have the right in its absolute discretion to terminate this Agreement without cause following fourteen (14) calendar days' prior written notice from District to Construction Manager.

6.2. Continuance of Work. In the event of a dispute between the parties as to performance of the work or the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, Construction Manager shall proceed diligently with the performance of all the work, provided District continues to make payment of all undisputed amounts in accordance with this Agreement. If the dispute is not resolved, Construction Manager or District shall submit such controversy to determination by a court having competent jurisdiction over the dispute after completion of the Project and not before.

6.3. Abandonment of Project. District has the absolute discretion to suspend or abandon all or any portion of the work on the Project and may do so upon fourteen (14) calendar days' written notice to Construction Manager. Upon notice of suspension or abandonment, Construction Manager shall immediately discontinue any further action on the Project or designated portion thereof. If the entire work to be performed on the Project is abandoned, the parties shall each be relieved of the remaining executory obligations of the Agreement, as it

relates to the Project, but shall not be relieved of any obligations arising prior to said abandonment.

6.4. Compensation in the Event of Termination, Abandonment or Suspension. In the event District terminates, abandons or suspends the work on the Project for cause, there shall be due and payable within thirty (30) calendar days following such termination, abandonment or suspension, or submission of Construction Manager's approved pay application, a sum of money sufficient to increase the total amount paid to Construction Manager to an amount which bears the same proportion to the total fee as the amount of services performed or provided by Construction Manager prior to the time of such termination, suspension or abandonment of this Agreement.

In the event of termination due to a breach of this Agreement by Construction Manager, the compensation due Construction Manager upon termination shall be reduced by the amount of damages sustained by District due to such breach.

In the event that District chooses to abandon the Project or terminate the Agreement for convenience, Construction Manager shall be reimbursed for reasonable termination costs through the payment of: (1) three percent (3%) of the Construction Manager's Fee earned to date if less than fifty percent (50%) of the Construction Manager's Fee has been paid; or (2) three percent (3%) of the remaining Construction Manager's Fee if more than fifty percent (50%) of the Construction Manager's Fee has been paid. This payment is agreed to compensate Construction Manager for any damages resulting from early termination and is consideration for entry into this termination for convenience clause.

6.5. Delivery of Documents. Upon termination, abandonment or suspension, Construction Manager shall deliver to District all documents and matters related to the Project within ten (10) calendar days.

## **ARTICLE 7: INDEMNIFICATION.**

To the fullest extent permitted by law, Construction Manager agrees to indemnify, defend and hold the District entirely harmless from all liability arising out of:

(a) **Workers Compensation and Employers Liability.** Any and all claims under Workers' Compensation acts and other employee benefit acts with respect to Construction Manager's employees or Construction Manager's sub-consultant's employees arising out of Construction Manager's work under this Agreement. The Construction Manager, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the District, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the District, its officers, agents or employees in any action, suit or other proceedings as a result thereof; and

(b) **General Liability.** Liability for damages for (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of law or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by the District or the Construction Manager, or any person, firm or corporation employed by the Construction Manager upon or in connection with this Agreement or the Project, except for liability resulting from the sole or active negligence, or willful misconduct of the District, its officers, employees, agents or independent consultants who are directly employed by the District. The Construction Manager, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the District, its officers, agents (excluding the Project Inspector, the Architect, or other design professionals retained by District or Architect) or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the District, its officers, agents or employees in any action, suit or other proceedings as a result thereof; and

(c) **Professional Liability.** Any loss, injury to or death of persons or damage to property caused by any act, neglect, default or omission of the Construction Manager, or any person, firm or corporation employed by the Construction Manager, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation including the District, arising out of, or in any way connected with the Construction Management Services, including injury or damage either on or off District property; but not for any loss, injury, death or damages caused by sole or active negligence, or willful misconduct of the District.

The indemnity requirements described in this Article 7 is intended to apply during the period of Construction Manager's performance under this Agreement and shall survive the expiration or termination of this Agreement.

## **ARTICLE 8: SUCCESSORS AND ASSIGNS.**

This Agreement is binding upon and inures to the benefit of the successors, executors, administrators, and assigns of each party to this Agreement, provided, however, that

Construction Manager shall not assign or transfer by operation of law or otherwise any or all rights, burdens, duties, or obligations without prior written consent of District, which consent may be withheld in District's absolute discretion. Any attempted assignment without such consent shall be invalid.

**ARTICLE 9: APPLICABLE LAW.**

This Agreement shall be governed by the laws of the State of California, and in the event that District receives any state funding for the Project from the SAB, this Agreement shall also be governed by any applicable laws and/or regulations relating to such state funding from the SAB ("Applicable Law"). To the extent that there is any inconsistency between this Agreement and the Applicable Law, or if this Agreement omits any requirement of the Applicable Law, the language of the Applicable Law, in effect on the date of the execution of this Agreement, shall prevail and be deemed incorporated herein as if set forth in full.

**ARTICLE 10: CONSTRUCTION MANAGER NOT OFFICER OR EMPLOYEE OF DISTRICT.**

While engaged in carrying out and complying with the terms and conditions of this Agreement, Construction Manager is an independent contractor and not an officer or employee of District.

**ARTICLE 11: INSURANCE/BONDS.**

11.1. Construction Manager shall purchase and maintain insurance for comprehensive general liability, comprehensive automobile liability, excess commercial liability/umbrella, workers' compensation, occupational disease, employers liability professional liability, and builders risk (if applicable) insurances that will protect the Construction Manager in the following amounts for the claims set forth below which may arise out of or result from Construction Manager's operations under this Agreement whether such operation be by itself or by any contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

11.1.1. Comprehensive General Liability, Comprehensive Automobile Liability, and Excess Commercial Liability/Umbrella. Such policy shall cover claims for damages because of injury to persons (including, but not limited to claims for damages because of bodily injury, sickness, disease, or death), or destruction to property (including loss therefrom) from claims arising out of Construction Manager's performance of this Agreement or otherwise caused by the negligent or intentional acts or omissions of Construction Manager, Trade Contractors, or of any officer, director, stockholder, employee, consultant to or partner to Construction Manager, and shall include coverage for Contractual and Assumed Liability and Owned, Hired and Non-owned Automobile Insurance.

The Construction Manager's comprehensive general and automobile liability insurance policies shall be written for not less than the following limits of liability:

Comprehensive General Liability

Personal Injury:	Property Damage:
\$1,000,000 Each Occurrence	\$1,000,000 Each Occurrence
\$2,000,000 Aggregate	\$2,000,000 Aggregate

Comprehensive Automobile Liability

Bodily Injury:	Property Damage:
\$1,000,000 Each Person	\$1,000,000 Each Occurrence
\$1,000,000 Each Occurrence	

Excess Commercial Liability/Umbrella

\$4,000,000 (over the underlying \$1,000,000 policy amounts)

11.1.2. Workers' Compensation, Occupational Disease, and Employers Liability Insurance. Construction Manager shall obtain such policies, which shall be in accordance with the provisions of the California Labor Code, adequate to protect all persons contracted or employed by Construction Manager from claims under Workers' Compensation Acts which may arise from the performances of services under this Agreement, whether such performance of services are by Construction Manager or anyone directly or indirectly contracted or employed by Construction Manager. The Construction Manager's workers' compensation, occupational disease and employer's liability insurance policies shall be written for limits not less than \$1,000,000 covering all workplaces involved in the Contract Documents.

11.1.3. Builders Risk Insurance. If requested by the District in writing, Construction Manager shall provide Builders Risk Insurance and such policy shall protect from loss or damage to work in the course of construction in the amount of the full Price, plus value of subsequent modifications, comprising total value for the entire Project on a replacement cost basis with no coinsurance clause. This insurance will not cover Construction Manager's or Trade Contractor tools, machinery, supplies, personal property, equipment, or materials that are not intended to become a permanent part of the structure, all of which shall remain the responsibility of the Construction Manager and Trade Contractors to protect and insure. This insurance shall be in the form of "builder's all-risk," or the equivalent and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, theft, vandalism, malicious mischief, collapse, earthquake, flood, cold testing, and resulting damage caused by faulty design, specifications and workmanship, offsite property and property in transit. This insurance will include the District, Construction Manager, and Trade Contractors as insureds on the policy. The builders' risk insurance premium will be a cost of work item, per Articles 3 and 4 of this Agreement. If requested by the District, payment for such insurance shall be agreed upon and set forth in the Final Price approved by the Parties after bids for all trade contracts have been received by the District. If the District does not request Construction

Manager to provide the insurance, District shall purchase and maintain such coverage as described above.

11.1.4: **Waiver of Subrogation.** The District and Construction Manager waive all rights against each other and their Trade Contractors, subcontractors, sub-subcontractors, agents and employees and each of the other for damages caused by fire or other causes of loss to the extent covered by Builder's Risk Insurance obtained pursuant to this Section 11.1.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of insurance held by Construction Manager as fiduciary. The District and Construction Manager, as appropriate, shall require of the Trade Contractors, subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.1.5: Each policy of insurance required in Section 11.1.1 above shall name the District and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of Construction Manager hereunder, such policy is primary and any insurance carried by the District is excess and non-contributory with such primary insurance; shall state that no less than thirty (30) days' written notice shall be given to the District prior to cancellation; and, shall waive all rights of subrogation. Construction Manager shall notify the District in the event of material change in, or failure to renew, each policy. Prior to commencing work, Construction Manager shall deliver to the District certificates of insurance as evidence of compliance with the requirements herein. In the event Construction Manager fails to secure or maintain any policy of insurance required hereby, the District may, at its sole discretion, secure such policy of insurance in the name of an for the account of Construction Manager, and in such event Construction Manager shall reimburse the District upon demand for the costs thereof.

11.2 Professional Liability Insurance, including contractual liability, with limits of \$1,000,000, per occurrence.

11.3 Payment/Performance Bonds. Prior to commencing any portion of the Services required by this Agreement, the Construction Manager shall furnish separate payment and performance bonds for the General Conditions required by this Agreement which shall cover 100% faithful performance of and payment of all obligations arising under this Agreement and/or guaranteeing the payment in full of all claims for labor performed and materials supplied in connection with the General Conditions required by this Agreement. Construction Manager shall not provide any bonds to cover any of the work in trade contracts as each trade contractor will be required to provide the District with separate payment and performance bonds to cover 100% of the faithful performance of and payment of all the obligations arising under the respective trades contracts. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California as sureties. To the extent, if any, that the Construction Manager's General Conditions are increased in accordance with this Agreement, the

Construction Manager shall, upon request of the District, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the District. To the extent available, the bonds shall further provide that no change or alteration of this Agreement (including, without limitation, an increase in the General Conditions, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Construction Manager will release the surety. If the Construction Manager fails to furnish the required bonds, the District may terminate the Agreement for cause. The sureties' liability shall be limited to the amount of the Construction Manager's General Conditions.

## **ARTICLE 12: EXTENT OF AGREEMENT**

12.1. This Agreement represents the entire and integrated agreement between District and Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both District and Construction Manager.

## **ARTICLE 13: ASSIGNMENT OF TRADE CONTRACTS**

13.1. Notification of Assignment. District hereby assigns to Construction Manager all of its rights and duties with respect to each Trade Contract awarded pursuant to Section 1.2.1 effective upon execution of an assignment agreement by Construction Manager, District, the applicable Trade Contractor, and such Trade Contractor's surety ("Assignment Agreement"). The language of the Assignment Agreement shall be attached hereto. This Agreement shall prevail over the Assignment Agreement to the extent that there are any inconsistencies.

13.2. Consideration. In consideration for each assignment which is effective as set forth herein, District agrees to pay Construction Manager the bid amount for the Trade Contract relating to such assignment. District's payments to Construction Manager of such consideration shall be processed in the same manner as the payment procedures set forth in the Trade Contracts and District shall make payments to Construction Manager within twenty-five (25) calendar days of the receipt of the appropriate approved invoice from Construction Manager. However, in the event that the Project Costs (inclusive of payments pursuant to this Section) exceed the Price, as it may be adjusted by the District and Construction Manager in accordance with this Agreement, Construction Manager shall be responsible for any excess payments under the assigned Trade Contracts.

13.3. Retained Rights. Notwithstanding the above, District shall conditionally retain, effective upon the non-performance of Construction Manager of its obligations and notice by District of such non-performance, all rights under the Trade Contracts, including without limitation, the right to demand performance under such Trade Contracts, and any rights related to patent and latent defects as well as any rights related to performance bonds, payment bonds or insurance which are required pursuant to such Trade Contracts. District shall retain the benefits that derive from the Trade Contracts (i.e., the Project).

13.4. Assignability. It is further agreed that each of the Trade Contracts shall include provisions which provide that District's rights and duties under such Trade Contracts are freely assignable to Construction Manager, and that District retains all rights specified in Section 13.3.

13.5. Statutory Requirements. Construction Manager acknowledges that the Trade Contracts are subject to statutory payment provisions with respect to public works; therefore, Construction Manager agrees to abide by such statutory payment provisions as well as any payment procedures which are set forth in the Trade Contracts.

13.6. Indemnification. After Construction Manager accepts the Assignments provided for herein, Construction Manager agrees to indemnify, defend and hold harmless District, its officers, agents (excluding the Project Inspector, the Architect and other design professionals retained by District or Architect) and employees, from and against any and all claims, liabilities, causes of action, damages, and expenses of any kind, arising out of or related to any payments to Contractors under any of the Trade Contracts, including without limitation any stop notice action as long as District makes all of the payments required by District pursuant to Section 13.2 of this Agreement, excepting any funds which relate to disputed work which may be withheld according to law, or which have been encumbered by stop notices or court order. Construction Manager's agreement to indemnify herein includes all costs in defending District including without limitation, attorney's fees, expert fees, or other expenses associated with such defense by District.

**ARTICLE 14: SEVERABILITY.**

14.1. If any part of this Agreement is determined to be illegal or unenforceable, all other parts shall remain in effect.

***(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)***



The parties, through their authorized representatives, have executed this Agreement on the dates indicated opposite their signatures.

**OWNER**

**SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT**

DATE: \_\_\_\_\_, 2016

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**CONSTRUCTION MANAGER:**

\_\_\_\_\_

DATE: \_\_\_\_\_, 2016

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT “A” – Preliminary Price**

**EXHIBIT "B"**

**OWNER OPTION ASSIGNMENT AGREEMENT**

This Assignment Agreement is valid as of \_\_\_\_\_ (the "Effective Date") by and between the San Bernardino City Unified School District (the "District"), \_\_\_\_\_ ("Construction Manager"), \_\_\_\_\_ ("Trade Contractor") and \_\_\_\_\_ (the "Trade Contractor's Surety"), collectively the "parties." This Assignment Agreement amends, restates, replaces and supplements certain aspects of the Trade Contract entered into by and between the District and Trade Contractor for work on the \_\_\_\_\_ Project (the "Project") and the parties agree and consent to the following recitals, terms and conditions:

**WHEREAS**, the District and Construction Manager entered into a Construction Management (At-Risk) Services Agreement on \_\_\_\_\_ 2016 for the completion of the Project;

**WHEREAS**, the District then entered into a Trade Contract with Trade Contractor;

**WHEREAS**, the District and the Trade Contractor desire to modify the Trade Contract, as set forth herein;

**WHEREAS**, the District desires to assign to Construction Manager, and Construction Manager desires to accept the assignment of the Trade Contract and the rights and benefits associated therewith, and Trade Contractor agrees with and does not object to the assignment;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

**ARTICLE I  
AGREEMENT**

1.1. The parties mutually agree to, and do hereby, modify the Trade Contract as of the Effective Date. The parties acknowledge and agree that:

- A. Pursuant to Article 13 of the Construction Management (At-Risk) Services Agreement between the District and Construction Manager, the District's Trade Contract with Trade Contractor is assigned by the District to Construction Manager and Construction Manager accepts the assignment of the Trade Contract.
- B. All rights and obligations the District has under the Trade Contract are hereby transferred to the Construction Manager as of the Effective Date.

C. All references and meaning to the word “Owner” in the Trade Contract shall remain the same, and therefore “Owner” shall refer to the District, with all of the corresponding rights, obligations and benefits thereof.

D. All references to the word "District" in the Trade Contract shall be replaced with the word “Construction Manager” with all of the respective rights, obligations and benefits resulting therefrom.

E. Trade Contractor acknowledges and accepts all of the terms of this Assignment Agreement and agrees to be bound accordingly.

1.2. Said assignment contemplated herein notwithstanding, the District and Construction Manager shall continue to be bound by and agree to comply fully with their obligations under the Construction Management (At-Risk) Services Agreement, and with any other term or provision imposing an obligation on the parties.

1.3. Notwithstanding the parties’ desire, intent and agreement to modify the Trade Contract through this Assignment Agreement, should the District, at its sole discretion, wish to cancel, void and/or terminate this Assignment Agreement at any future time, the District may do so by providing written notice to the Construction Manager and Trade Contractor. In such an event, simultaneously upon communication of written notice, this Assignment Agreement shall be deemed canceled, voided and/or terminated and the District and Construction Manager shall look solely to and be bound by the original terms of the Construction Management (At-Risk) Services Agreement and District and Trade Contractor shall look solely to and be bound by the Trade Contract. If this Assignment Agreement is determined by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, the Construction Management (At-Risk) Services Agreement shall nevertheless remain in full force and effect.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES**

2.1. Construction Manager represents and warrants to the District that is a limited liability company duly organized, in good standing and validly existing under the laws of the State of Delaware. The execution, delivery and performance of this Assignment Agreement by Construction Manager has been duly authorized.

2.2. The District represents and warrants to Construction Manager and Trade Contractor that the DISTRICT is duly organized and in good standing and validly existing under the laws of the State of California. The execution, delivery and performance of this Assignment Agreement by the District has been duly authorized.

## **ARTICLE III MISCELLANEOUS**

3.1. Entire Agreement. This Assignment Agreement and the Exhibits attached hereto constitute the entire agreement between the parties with respect to the subject matter hereof and

shall supersede all prior written and oral and all contemporaneous oral agreements and understandings with respect to the subject matter hereof.

3.2. Governing Law. This Assignment Agreement shall be construed in accordance with and governed by the laws of the State of California.

3.3. Notices. Notices, offers, requests or other communications required to be given by either party pursuant to the terms of this Assignment Agreement shall be given in writing to the respective parties.

3.4. Counterparts. This Assignment Agreement, and the other documents referred to herein or therein, may be executed in counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

3.5. Binding Effect; Assignment. This Assignment Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives and successors, and nothing in this Assignment Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Assignment Agreement. No party may assign this Assignment Agreement or any rights or obligations hereunder, without the prior written consent of the other parties, and any such assignment shall be void; provided, however, each party may assign this Assignment Agreement to a successor entity in conjunction with such party's reincorporation.

3.6. Severability. If any term or other provision of this Assignment Agreement is determined by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Assignment Agreement shall nevertheless remain in full force and effect.

3.7. Authority. Each of the parties hereto represents to the other that (a) it has the corporate or other requisite power and authority to execute, deliver and perform this Assignment Agreement, (b) the execution, delivery and performance of this Assignment Agreement by it have been duly authorized by all necessary corporate or other actions, (c) it has duly and validly executed and delivered this Assignment Agreement, and (d) this Assignment Agreement is a legal, valid and binding obligation, enforceable against it in accordance with its terms.

3.8. Interpretation. The headings contained in this Assignment Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Assignment Agreement. Any capitalized term used but not otherwise defined therein, shall have the meaning assigned to such term in this Assignment Agreement.

**WHEREFORE**, the parties have signed this Assignment Agreement effective as of the date first set forth above.

**CONSTRUCTION MANAGER**

BY: \_\_\_\_\_

\_\_\_\_\_  
Print Name

ITS: \_\_\_\_\_

**DISTRICT**

BY: \_\_\_\_\_

\_\_\_\_\_  
Print Name

ITS: \_\_\_\_\_

**TRADE CONTRACTOR**

BY: \_\_\_\_\_

\_\_\_\_\_  
Print Name

ITS: \_\_\_\_\_

**TRADE CONTRACTOR'S SURETY**

BY: \_\_\_\_\_

\_\_\_\_\_  
Print Name

ITS: \_\_\_\_\_

**EXHIBIT “C” – General Conditions Breakdown**

**EXHIBIT “C -1” – Preconstruction Cost Breakdown**



**EXHIBIT “D” – Hourly Rates for CM Personnel**