

**CONSTRUCTION MANAGEMENT SERVICES**  
(For Multi-Prime Projects)

This Construction Management Services Agreement (“Agreement”) is made and entered into this [redacted] day of [redacted], 20[redacted] by and between the Las Virgenes Unified School District (hereinafter the “District”) and [redacted] (hereinafter referred to as “Construction Manager”) for construction management services relating to a multi-prime construction contract for construction of [redacted] (the “Project”).

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

Construction Manager represents to the District that it has the necessary license for a Construction Manager as provided for in Government Code section 4525 et seq. that it has expertise and experience in construction supervision; 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 the District in the management of the construction of the Project. 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 shall provide the following services with respect to Project.

Construction Manager agrees that in the event the District seeks State funding for the Project and the SAB adopts a policy for construction management services applicable to the New State Program (“New SAB Policy”), Construction Manager shall comply with the New SAB Policy and this Agreement shall be revised to comply with the New SAB Policy if the District is required to comply with the New SAB Policy as a condition for receiving State funding for the Project. The term of the agreement shall be \_\_\_\_\_.

**1.1 PRECONSTRUCTION SERVICES**

1.1.1 The services to be provided during the Preconstruction Phase for the Project include, but are not limited to, providing responsible reporting, documentation, recommendations and supervision of the following services: pre-construction scheduling, review and recommendations during the design development stages from the schematic phase to the completion of working drawings, preparation of conceptual and periodic estimates, budget assessment and cost containment advice, value engineering studies and recommendations, and Construction Manager reviews.

1.1.2 Construction Management Plan. In consultation with the Architect of Record (“Architect”), the Construction Manager shall prepare a Construction Management Plan for the Project which shall establish the scope for the Project and the general basis for the sequence

of contracting for construction of the Project. In preparation for this Construction Management plan, the Construction Manager shall evaluate the local construction market, the District's schedule and budget goals for the Project, develop various alternative approaches, and make recommendations to the District. Upon approval by the District of the Construction Management Plan for the Project, the Construction Manager shall prepare the Construction Management Plan in final form. This document shall indicate the Project's rationale and recommend the strategy for purchasing, construction, the various bid packages for Project, and a Master Project Schedule.

## 1.2 GENERAL SERVICES

1.2.1 Master Project Schedule. The Construction Manager shall develop a Master Project Schedule for the Project, subject to approval by the District, which shall contain key milestones to be accomplished by the participants, including milestone completion dates for the Architect's and any consultant's design activities. The Master Project Schedule shall be consistent with the schedule attached hereto as Exhibit "A" and incorporated herein. The Master Project Schedule shall contain a critical path schedule for the construction of the Project and shall provide all major elements including dates, durations, phasing, milestones, and general sequencing necessary for the completion of the Project. The Master Project Schedule shall utilize the completion date of [REDACTED], 20[REDACTED]. The Construction Manager shall periodically update the Master Project Schedule for the Project and submit each update to the District for the District's approval. Based on the approved Master Project Schedule, the Construction Manager shall prepare an Outline Schedule that includes all requirements of the Project. The Outline Schedule will be issued to all bidders for the Project and will be used by the Trade Contractors to prepare their Trade Contractor Baseline Schedules and to prepare the Project Baseline Schedule.

1.2.2 Project Budget. The Construction Manager shall provide a budget based upon the amounts provided by the District pursuant to Article 2.2 ("Project Budget"). This budget shall include: the anticipated total of all of the separate contracts for the Project pursuant to Article 1.2.9 ("Construction Cost"); Construction Manager's compensation; and the General Conditions costs as provided in this Agreement. The Construction Manager shall review any Project requirements of District, the District's schedule goals, and existing budget data.

The Construction Manager shall make a report of the Project Budget to the District indicating: (1) shortfalls or surpluses in the budget, and (2) recommendations for cost reductions, value engineering, or revisions to the District's Project requirements. The Construction Manager shall consult with the Architect and the District to suggest reasonable adjustments in the scope of the Projects, if any, and to suggest alternate Bids in Construction Documents to adjust the construction costs to conform to the Project Budget.

1.2.3 Cost Management Procedures. The Construction Manager shall implement and maintain cost management procedures throughout the Preconstruction Phase for the Project. When design or programmatic changes are made and approved by the District, these changes shall be recorded and the cost effect shall be documented.

1.2.4 Construction Management Coordination. The Construction Manager shall provide input to the District relative to means and methods of construction, duration of construction, and constructability.

1.2.5 Constructability Reviews. The Construction Manager shall review the Architect's 50% and 90% Construction Documents submissions and provide written comments on the coordination of the various disciplines, including, but not limited to, civil, structural, architectural, mechanical, electrical, HVAC, plumbing, and landscape. The Construction Manager shall perform constructability reviews of such Construction Documents utilizing a checklist type method such as Redicheck or some other form acceptable to District. The checklists shall be made available to the District. The Construction Manager shall confirm that all constructability comments and revisions agreed upon by the Construction Manager, Architect and District are incorporated into the Construction Documents prior to them being issued to bidders.

1.2.6 Cost Adjustment Sessions/ Value Engineering. The Construction Manager shall prepare for the District's approval a more detailed estimate of Construction Cost, as defined in Article 3, developed by using estimating techniques which anticipates the various elements of the Project. The Construction Manager shall update and refine this estimate at 50% and 90% completion of the Construction Documents. The Construction Manager shall advise the District and the Architect if it appears that the Construction Cost may exceed the budgeted amount for Construction Cost as set forth in the Project Budget. The Construction Manager shall make recommendations for corrective action to bring the Construction Costs within the District Budget including any proposed value engineering to reduce costs. The Construction Manager shall confirm that all approved value engineering revisions are incorporated into the Construction Documents prior to them being issued to bidders.

1.2.7 Design Review and Comments. The Construction Manager shall provide coordination between the Architect and the District on the proper flow of information for the Project. The Construction Manager shall develop written procedures for orderly communication to all Project consultants. Construction Manager shall advise on-site use and improvements. A fixed limit has been established under Article 2.2 The Construction Manager shall consult with the Architect and the District to suggest reasonable adjustments in the scope of the Project, and to suggest alternate bids in the Construction Documents to adjust the Construction Cost to the budgeted amount for Construction Cost as set forth in the Project Budget, if necessary.

1.2.8 Assignment of Responsibility. The Construction Manager shall provide recommendations and information to the District regarding the assignment of responsibilities for safety precautions and programs; temporary Project facilities; and equipment, materials and services for common use of contractors. The Construction Manager shall verify that the requirements and assignment of responsibilities are included in the proposed contract documents.

1.2.9 Separate Contracts (Multi-Prime Contracting). The Construction Manager shall advise on the separation of the Project into separate contracts for various categories of work ("Contracts"). The Construction Manager shall advise on the method to be used for selecting trade contractors and awarding individual bids. The Construction Manager shall prepare and revise contractor prequalification documents and identify potential contractors for District approval. The Construction Manager shall inspect, review, revise and assure proper delivery, assembly of the Project manuals and specifications and shall manage and coordinate the development of Construction Documents with the Architect. The Construction Manager shall review drawings and specifications for the Contracts to provide that: (1) the work of the separate contractors is coordinated, (2) all requirements for the Project have been assigned to the appropriate separate

Contract and there are no gaps or overlaps in the work for each Contract to fully complete the Project, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination has been provided for phased construction.

1.2.10 Monthly Reports. With the District’s assistance, Construction Manager shall provide a detailed cash flow tracking system for the Project. The system must be approved and accepted by the District. The Construction Manager shall update the cash flow spread sheet monthly or as required by the District.

1.2.11 Coordination of Relocation of District Property. If applicable, Construction Manager shall coordinate the moving, relocation, temporary housing and storing of the District’s property prior to the construction phase for the Project.

1.2.12 Office of Public School Construction and Other Public Agencies. The Construction Manager, in cooperation with the District and Architect, shall assist with the coordination and processing of all necessary paperwork and close-out documents with the Office of Public School Construction (“OPSC”), Division of the State Architect (“DSA”) and any other applicable public agencies.

1.2.13 Professional Consultants. The Construction Manager shall assist the District, if required, in selecting and retaining the professional services of surveyors, special consultants and testing laboratories, and coordinate their services.

**1.3 PLAN CHECK AND BIDDING PHASE.**

1.3.1 Bidding Procedures. The Construction Manager shall develop and expedite bidding procedures for bid document issuance, bid tracking and receipt of proposals with regard to each of the Contracts. The Construction Manager shall also take the necessary procedures to administer any prequalification of potential contractors as directed by the District and ensure that all Contracts are competitively bid when required by law.

1.3.2 Public Relations Activities. The Construction Manager shall assist the District in all public relations including, but not limited to, preparation of Project information and attending internal and public meetings as required, including site meetings. The Construction Manager shall be the point of contact for the entire community during all phases of construction in regards to any complaints, questions, safety issues, noise problems, dust problems, etc. and will notify the District in advance of taking any appropriate action that requires a public communication document or public statement.

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

1.3.4 Bid Advertisements. The Construction Manager shall coordinate the preparation and placement of the notices and advertisements to solicit bids for each of the Contracts as required by law in cooperation with the District.

1.3.5 Prepare and Expedite Bid Documents Delivery. The Construction Manager shall coordinate and expedite the preparation, assembly and delivery of bid documents and any addenda for each of the Contracts to the bidders including the following, as applicable:

- (a) Establish bid schedule by trade;
- (b) Prepare summaries of work bid packages;
- (c) Arranging for printing, binding and wrapping;
- (d) Arranging for delivery; and
- (e) Follow-up calls to the bidders.

The Construction Manager shall include the following requirements in all proposed Trade Contracts:

- (a) The following bonding requirements:
  - (i) Performance bond at 100% of the contract amount; and
  - (ii) Labor and material bond at 100% of the contract amount.
- (b) Insurance in amounts and coverage as directed by the District prior to bid.
- (c) All bonds must be provided by a California admitted surety.

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

1.3.7 Prequalification. The Construction Manager shall assist the District in administering any prequalification of bidders and subcontractors pursuant to Public Contract Code section 20111.5 and/or 20111.6, evaluating prequalification documents submitted by contractors and assisting in any appeals regarding a contractor’s prequalification result or status.

1.3.8 Coordination and Inquiries. The Construction Manager shall coordinate communications related to bidder inquiries and seek resolution for the appropriate party and provide timely forwarding of such information to the bidders and District.

1.3.9 Addenda Review. The Construction Manager shall administer the addenda process and shall provide a review of each addendum during the bid phase for time, cost, or constructability impact, and make appropriate comments or recommendations.

1.3.10 Bidding of Work. All construction work for the Project shall be competitively bid when required by law and awarded in no more than two bid phases in accordance with normal requirements for general contractors. If the Project is funded by State funds, the Construction Manager shall comply with any applicable SAB requirements. A bid phase summary shall be submitted with each bid phase package listing only the low bidders, their contract amounts, the Construction Manager's fee and General Conditions costs assigned to each bid phase, summed as a total committed cost. Construction Manager shall assist the District and Architect to ensure compliance with Education Code Section 17076.11 with respect Disabled Veteran Business Enterprise goals.

1.3.11 Bid Evaluation. The Construction Manager in cooperation with Architect shall assist the District in prequalification, the bid opening, evaluation of the bids for completeness, full responsiveness and price, including alternate prices and unit prices (if applicable), shall make a formal report to the District with regard to the potential award of a Contract, shall receive bids, prepare bids. The Construction Manager shall include a copy of the proposed Contract for each bidder recommended by the Construction Manager.

If applicable, the summary of bids shall classify all bids according to SAB cost allowance categories. When a bid includes work in more than one cost category, the summary shall assign an appropriate amount to each.

Construction Manager shall certify in writing that the Contracts contained in the submittal for the District represents all the contracts required to perform the work in the plans and specifications for the Project, and that no additional contracts are foreseen to complete the necessary work for such Project. In the event the contracts and the work deferred for the future do not represent 100% of the work, Construction Manager shall be responsible for providing all the construction management services necessary to complete the work that was not included in the initial Contract submittal at no additional cost to the District. In no event shall Construction Manager be entitled to additional compensation or general conditions costs for performing construction management services that are necessary to complete work that was not included in the initial Contracts submittal prepared by the Construction Manager.

1.3.12 Rebidding. In the event the bids exceed the Project Budget and the District authorizes rebidding of all or portions of the Project, the Construction Manager shall cooperate in revising the scope and the quality of work as required to reduce the construction costs for the Project. The Construction Manager, without additional compensation, shall cooperate with the District and Architect as necessary to bring construction costs within the Project Budget.

1.3.13 Non-interest in Project. The Construction Manager shall not be a bidder, or perform work for any bidder on any individual Contract.

1.3.14 Purchase, Delivery and Storage of Materials and Equipment. If applicable, the Construction Manager shall investigate and recommend a schedule for the District's purchase of 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. The Construction Manager shall expedite and coordinate delivery of all purchases.

If applicable, the Construction Manager shall arrange for delivery and storage, protection and security for District -purchased materials, systems and equipment which are a part of the Project, until such items are incorporated into the Project. The Construction Manager shall coordinate with or assign these activities to the appropriate contractor who is responsible for the installation of such materials, systems, and equipment.

1.3.15 Analysis of Labor. The Construction Manger 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. The Construction Manager shall make recommendations to minimize adverse effects of labor shortages.

#### **1.4 CONSTRUCTION PHASE.**

The Construction Phase for the Project shall commence with the award of the initial Contract and shall continue until sixty-five (65) days after the recording of a notice of completion for the Project or sixty-five (65) days after completion of the Project as defined in Public Contract Code Section 7107 whichever is earlier.

The Construction Phase consists of the coordination of all activities that are included in the construction of a particular Project. The Construction Manager shall be responsible for coordinating the work for the Project pursuant to the Outline Schedule and Project Baseline Schedule for the construction of the Project. The Construction Manager shall maintain communication with the District throughout the Construction Phase and shall provide responsible reporting and documentation prior to the contractors' pre-construction conference and shall be responsible for coordinating the site construction services provisions (general conditions items) including supervision and administration of the Project, conducting construction progress meetings, providing progress reports, processing contractors requests for information (RFI's), reviewing and recommending with the Architect the approval or disapproval of construction change documents, immediate change directives, change orders and payments to the contractors, and maintaining record keeping to assist the District in negotiations, mediation or arbitration of claims or disputes.

1.4.1 Pre-Construction Conference(s). The Construction Manager shall conduct, in conjunction with the District and the Architect, pre-construction orientation conference(s) for the benefit of the successful contractors and shall serve to orient the contractors to the various reporting procedures and site rules prior to the commencement of actual construction. The Construction Manager shall obtain the certificates of insurance and bonds from the contractors and forward such documents after approval by the Construction Manager to the District. Construction Manager shall conduct initial coordination meetings with the Trade Contractors as required to review and analyze the Contract Documents and address conflicts and clashes observed or that are otherwise determined to exist in the Contract Documents by the Construction Manager so issues can be resolved through RFI's or generated questions.

1.4.2 Contract Administration. The Construction Manager, in cooperation with the Architect, shall administer the construction Contracts as set forth herein and as provided in the General Conditions of the Contacts for construction. The Construction Manager shall coordinate the preparation of construction staging areas on-site for the Project and shall coordinate the

preparation of the site for construction, including, but not limited to, coordinating fencing, barricades or other items reasonably necessary for efficient construction. The Construction Manager shall also coordinate the mobilization of all contractors and shall coordinate construction sequencing.

In addition, the Construction Manager shall provide management and related services as required to coordinate work of the contractors with each other and the activities and responsibilities of the Architect and the District in order to complete the Project in accordance with the Contract Documents and this Agreement and within the Project Budget. The Construction Manger shall provide sufficient organization, qualified and experienced personnel and management to carry out the requirements of this Agreement.

The Construction Manager shall maintain a competent full-time staff at the Project site for the purpose of coordinating and providing general direction for the work and progress of the contractors.

1.4.3 Submittal Procedures. The Construction Manager shall establish and implement procedures with the Architect and coordinate and review shop drawing submittals, requests for information, samples, product data, change orders, payment requests, material delivery dates and other procedures; and maintain logs, files and other necessary documentation. Construction Manager shall assist the Architect and the District's inspector with confirming all contractors and subcontractors submit certified payroll records to the Labor Commissioner in accordance with Labor Code section on at least on a monthly basis (or more frequently if required by the District or the Labor Commissioner). The Construction Manager shall coordinate the dissemination of any information regarding submittals and consult with the Architect and the District if any Contractor requests interpretations of the meaning and intent of the Contract Documents, and assist in the resolution of questions which may arise.

1.4.4 Meetings. The Construction Manager shall coordinate and conduct preconstruction, construction and weekly job-site progress meetings with the Contractors and shall work with the Architect to ensure that the Architect records, transcribes and distributes minutes to all attendees, the District, and all other appropriate parties. The Construction Manager shall assist in the resolution of any technical construction issues.

1.4.5 Coordination of Technical Inspection and Testing. The Construction Manager shall coordinate with the District's certified inspector all testing required by the Architect or other third parties. If requested, the Construction Manager shall assist the District in selecting any special consultants or testing laboratories. All inspection reports shall be provided to the Construction Manager on a regular basis.

1.4.5.1 The Construction Manager shall verify that the Project Inspector has the appropriate amount of Project Inspection Cards (Form DSA 152) that are needed for the inspection and completion of the entire Project prior to the commencement of any work by any Trade Contractor on the Project. The Construction Manager shall immediately inform the District and the Architect if the Project Inspector does not have the requisite Project Inspection Cards needed for the inspection and completion of the Project. 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.

1.4.5.2 The Construction Manager shall meet with the Architect, Project Inspector, District, Trade Contractors, Laboratory of Record and Special Inspectors as needed throughout the completion of the Project to verify, acknowledge and coordinate the testing and special inspection program required by the DSA approved Construction Documents.

1.4.5.3 The Construction Manager shall coordinate with all 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. The Construction Manager shall establish a procedure to verify that the Architect, Architect's Consultants, Project Inspector, Laboratory of Record and Trades 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 the DSA's PR 13-01 and 13-02. As part of the procedure established under this section, Construction Manager must be able to verify that all interim verified reports and 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 Owner when the Architect, Architect's Consultants, Project Inspector, Laboratory of Record or Contractor have failed to comply with the Construction Oversight Process Procedure and must inform the Owner of the impact such failure(s) will have upon the Project and its schedule.

1.4.5.4 Any references to the DSA requirements, DSA forms, documents, manuals applicable to the Project shall be deemed to include and incorporate any revisions or updates thereto.

1.4.6 Construction Observation. The Construction Manager shall assist the District's 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. The Construction Manager shall report to the District regarding the status of such activity. The Construction Manager shall endeavor to guard against defects and deficiencies and shall advise the District of any deviations, defects or deficiencies the 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 contract documents. These observations shall not, however, cause the Construction Manager to be responsible for those duties and responsibilities which belong to the District's inspector.

1.4.7 Non-Conforming Work. The Construction Manger shall, in conjunction with the District's inspector, review contractor's recommendations for corrective action on observed non-conforming work. The Construction Manager shall make recommendations to the District, the Architect and Project Inspector in instances where the Construction Manager observes work that, in its opinion, is defective or not in conformance with the contract documents. The Construction Manager shall assist the Project Inspector in observing the Contractor's work to verify that all authorized changes are properly incorporated in the Project. The Construction

Manager shall report to the District regarding the status of such activity and provide a written record of the same.

1.4.8 Exercise of Contract Prerogatives. The Construction Manager shall advise the District and make recommendations to the District for exercising the District's Contract prerogatives, such as giving the Contractor notice to accelerate the progress when the schedule goals are in jeopardy due to Contractor failings, withholding payment for cause and other prerogatives when required in an effort to achieve Contract compliance.

1.4.9 Implementation of Project Baseline Schedule. The Construction Manager shall prepare and implement a Project Baseline Schedule based on the input and Trade Contractor Baseline Schedules provided by the Trade Contractors. The Project Baseline Schedule (or Schedule Update) prepared by the Construction Manager shall then constitute the schedule to be used by Trade Contractors, separate contractors, and the District until subsequently revised. The Project Baseline Schedule shall incorporate the Outline Schedule from the Master Project Schedule and shall note durations that will not be adequate or should be shortened based on the reviews of the Trade Contractors. Any modifications to the Outline Schedule shall be reviewed with all other applicable Trade Contractor Baseline Schedules and incorporated into the Construction Manager's Project Baseline Schedule for the entire Project. Construction Manager shall regularly update and maintain the Project Baseline Schedule incorporating the activities of Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of shop drawings, product data and samples, and delivery of products requiring long lead time procurement. The Project Baseline Schedule shall include the District's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update, reissue and distribute the Project Baseline Schedule as required to show current conditions and revisions required by the actual experience and to incorporate Trade Contractor updates. The Construction manager shall notify the District when a Trade Contractor fails to participate in the coordination process of the Project Baseline Schedule or otherwise fails to provide a Trade Contractor Baseline Schedule related to its scope of Work for use by the Construction Manager.

1.4.10 Safety Programs. To the extent required by OSHA or any other public agency, Construction Manager shall obtain each Contractor's safety programs and monitor their implementation along with any necessary safety meetings. Construction Manager shall ensure that such safety programs are submitted to the District.

1.4.11 Endorsements of Insurance, Performance/Payment Bonds. The Construction Manager shall receive and review Endorsements of Insurance, Performance/Payment Bonds from the Contractors and forward them to the District with a copy to the Architect prior to commencement of any work by such contractors. Construction Manager shall inform the District of any noted deficiencies in insurance, or bonds submitted.

1.4.12 Changes in Construction Cost. The Construction Manager shall revise and refine the approved estimate of Construction Cost, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed.

The Construction Manager shall provide regular monitoring of the approved estimate of Construction Cost, showing actual costs for activities in progress and estimates for

uncompleted tasks. The Construction Manager shall identify variances between actual and budgeted or estimated costs and advise the District and the Architect whenever the Project's costs appear to be exceeding budgets or estimates.

1.4.13 Construction Progress Review. The Construction Manager shall keep a daily log containing a record of weather, the Contractors working on the site, number of workers, work accomplished, problems encountered, and other relevant data or such additional data as the District may require. The Construction Manager shall make the log available to the District upon request. The Construction Manager shall prepare and distribute the construction schedule updates to the Project Baseline Schedule on a monthly basis to maintain the Project Baseline Schedule. After an evaluation of the actual progress as observed by the Construction Manager, scheduled activities shall be assigned percentage-complete values. The report shall reflect actual progress as compared to scheduled progress and note any variances. The Construction Manager shall identify problems encountered in accomplishing the work and recommend appropriate action to the District to resolve these problems with a minimum effect on the timely completion of the Project. If requested by the District, the Construction Manager shall assist the Contractor(s) in preparing a recovery schedule. The recovery schedule shall reflect the corrective action costs (if any) and efforts to be undertaken by the contractor(s) to recapture lost time. This recovery schedule shall be distributed to the Contractor(s), the District, Architect and other appropriate parties.

1.4.14 Maintain On-Site Records. The Construction Manager shall develop and implement a comprehensive document management program. The Construction Manager shall maintain at the Project site, on a current basis: a record copy of all Contracts, drawings, specifications, addenda, change orders and other modifications, in good order and marked to record all changes made during construction; shop drawings; product data; samples; submittals; purchases; materials; equipment; applicable handbooks; Titles 21 and 24 of the California Code of Regulations; the California Uniform Building Code; maintenance and operating manuals and instructions; other related documents and revisions which arise out of the Contracts. The Construction Manager shall maintain records in duplicate, of principal building layout lines, elevations for the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer, if necessary. The Construction Manager shall make all records available to the District. At the completion of the Project, the Construction Manager shall deliver all such records to the Architect, so the Architect may complete the record as-built drawings.

1.4.15 Schedule of Values and Processing of Payments. The Construction Manager shall review and approve each Contractor's schedule of values for each of the activities included in that Contractor's schedule of events. The Construction Manager shall develop and maintain a master schedule of values. The Construction Manager shall develop and implement procedures for the review and processing of applications by Contractors for progress and final payments. As part of the evaluation of progress payments, the Construction Manager shall review all "as-built" documents and ensure that the Contractor's "as-built" documents are updated and current. The Construction Manager shall review with the Architect and make recommendations to the District pertaining to payments to the Contractors.

1.4.16 Changes to the DSA Approved Construction Documents. 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 ensure that such changes are documented and implemented 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 by the Architect for review and approval. All other changes to the DSA approved Construction Documents not involving SAFLS portions of the Project are not require 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 140) inclusive of all supporting documentation and data. The Construction Manager shall verify that all CCD-Category B'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. 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 evaluate Trade Contractors' proposal costs and make a formal recommendation to the District regarding the acceptance of any proposals for a Change Order. The Construction Manager shall assist the Architect with the preparation and issuance of any Immediate Change Directives ("ICD"), as directed by the District, to complete work that is necessary due to a Trade Contractor's failure to complete the Project in accordance with the DSA approved Construction Documents. An ICD is a written order prepared by the Architect and signed by the District and the Architect directing a change in the work where the work must proceed immediately and stating a proposed basis for adjustment, if any, in a Trade Contractor's Contract sum or Contract Time, or both. The Construction Manager shall ensure that the Project Inspector is provided with a copy of each ICD and shall coordinate the inspection of the applicable work under any ICD pursuant to such ICD.

1.4.17 Negotiations of Change Order Costs and Time Extensions. All changes to the DSA approved Construction Documents, whether set forth in a CCD, ICD or any other document approved by the District, shall be incorporated into Change Orders prepared by the Construction Manager in conjunction with the Architect for the District's approval. Each Change Order shall identify: (1) the description of the change in the work; (2) the amount of the adjustment to the Trade Contractor's Contract sum, if any; and (3) the extent of the adjustment in the Trade Contractor's Contract Time, if any. The Construction Manager shall prepare Change Orders, with supporting documentation and data, for the District's review in accordance with the Construction Documents. The Construction Manager shall assist the District and the Architect representative in negotiating any CCD/Change Order costs and time extensions. The Construction Manager shall evaluate and make written recommendations regarding Trade Contractors' proposals for possible CCD's and/or Change Orders.

1.4.18 Change Order Reports. The Construction Manager shall not issue instructions contrary to the Contract between the District and a Trade Contractor, or between the District and Architect. The Construction Manager shall ensure that all changes to the Contract between the District and a Trade Contractor are documented by an approved CCD, ICD, or other document approved and executed by the District. Any communication between the Construction

Manager and the Trade Contractors shall not in any way be construed as binding on the District, or releasing the Trade Contractors from fulfillment of any of the terms of the Contract between the District and such Trade Contractors. For the Project, the Construction Manager shall prepare and distribute change order reports on a monthly basis throughout the Construction Phase. This report shall provide information pertaining to proposed and executed CCD's, ICD's and change orders and their effect on the Contract price and Project Baseline Schedule as of the date of the report.

1.4.19 Contractor Claims. The Construction Manager shall be given copies of all notices of claims by Contractors against the District for any alleged cause. The Construction Manager, jointly with Architect, shall perform evaluation of the contents of the claim within twenty-five (25) days, and make recommendations to the District. If requested by the District, the Construction Manager shall prepare estimates based on any alleged cause of claims submitted by the Contractor(s) and shall prepare alternate estimates based on varying scenarios of the claim cause. These estimates shall be transferred to the District and shall be used in claim rulings and negotiations. If requested by the District, the Construction Manager shall analyze the claims for extension of time and prepare an impact evaluation report which reflects the actual impact to the Project Baseline Schedule. The report shall also provide a narrative including a recommendation for action to the District. If requested by the District, the Construction Manager shall negotiate claims with the Contractor(s) on behalf of the District. The Construction Manager shall make a written recommendation to the District concerning settlement or other appropriate action. Excepting those claims of which the Construction Manager is responsible, Construction Manager's obligations pursuant to this Paragraph shall cease upon completion of the Project as defined in Article 1.4 of this Agreement.

1.4.20 Project Status Reports. The Construction Manager shall prepare and distribute monthly a Project Status Report. The Construction Manager shall ensure that the Verified Reports required by Title 24 of the California Code of Regulations be completed quarterly by the contractors for the Project.

1.4.21 Equipment Instruction Manuals, Warranties and Releases. The Construction Manager shall obtain all written material such as operations and maintenance manuals, warranties, affidavits, releases, bonds, waivers and guarantees for all equipment installed in the Project. All such materials, including equipment instruction material, keys and documents shall be reviewed and delivered to appropriate District personnel.

1.4.22 Completion of Contracts and Project. When the Construction Manager considers a Contractor's work or a designated portion thereof complete, the Construction Manager shall prepare for the Architect a list of incomplete or unsatisfactory items ("Punch-list") and a schedule for their completion. The Construction Manager shall assist the Architect in conducting inspections.

The Construction Manager shall coordinate the correction and completion of the work. The Construction Manager shall assist the Architect in determining when the Project or a designated portion thereof is substantially complete and finally complete. The Construction Manager shall prepare a summary of the status of the work of each contractor, listing changes in the previously issued Punch-list and recommending the times within which contractors shall complete the uncompleted items on the Punch-list.

1.4.23 As-Built Documents. The Construction Manager shall perform coordination, supervisory and expediting functions in connection with the contractor's obligation to provide "as-built" documents and make recommendations for adequate withholding of retention in the event that a contractor fails to provide acceptable "as-built" documents.

1.4.24 Training Sessions. The Construction Manager shall coordinate and schedule training sessions, if necessary, for the District's personnel and shall require that the Contractor's obligation in providing this training is fulfilled.

1.4.25 Recommendations to District. The Construction Manager shall endeavor to achieve satisfactory performance from each Contractor. The Construction Manager shall recommend courses of action to the District when requirements of a Contract are not being fulfilled, and the nonperforming party shall not take satisfactory corrective action.

1.4.26 Accounting Records. The Construction Manager shall establish and administer an appropriate Project accounting system in conjunction with the 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.

1.4.27 Permits. The Construction Manager shall assist the District in obtaining all necessary permits for the Project, including without limitation, building, grading, and occupancy permits. This task may encompass accompanying governmental officials (Fire Marshal, DSA, Health Department, etc.) during inspections, assisting in preparing and submitting proper documentation to the appropriate approving agencies, assisting in final testing and other necessary and reasonable activities.

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

1.4.29 Interim and Final Verified Reports. 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 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.

1.4.30 Final Completion and Project Report. The Construction Manager, in conjunction with the Architect and the District's Project Inspector, shall at the conclusion of all corrective action of Punch-list items, make a final comprehensive review of the Project, make a report to the District which indicates whether the Construction Manager and the Architect find the work performed acceptable under the DSA approved Construction Documents and the relevant

Project data, and make recommendations as to final payment and the approval of a Notice of Completion for the Project. At the conclusion the Project, the Construction Manager shall prepare final accounting and close-out reports of all above indicated report systems. These reports shall summarize, for historical purposes, any items which are not self-explanatory.

1.4.31 Assessment of Liquidated Damages. Construction Manager shall advise the District on the Liquidated Damages that shall be assessed against any Trade Contractor for failure to comply with the Baseline Schedule or Schedule Updates, failure to meet Milestones or the Contract Time and failure to timely complete the correction of all Punch-list items. Construction Manager shall immediately notify the District when Liquidated Damages become applicable on account of a Trade Contractor’s failure to perform so the District and Construction Manager can notify the Trade Contractor that the Liquidated Damages period has commenced.

**1.5 TIME.**

1.5.1 The 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 Projects.

1.5.2 In the event the construction time requirements set forth in Article 1.1.2 of this Agreement are exceeded, and the delay is caused by the Construction Manager, the Construction Manager’s fee shall be reduced by an amount of \$ [redacted] per calendar day as liquidated damages, but not as a penalty, starting from the scheduled construction completion date for the Project until construction is substantially complete.

1.5.3 Construction Manager shall be entitled to an extension of time for the time of completion and shall not be subject to a claim for liquidated damages for delays which may arise due to an Act of God as defined in Public Contract Code section 7105 if the act of God affects the governmental agency from which approvals are necessary for completion of the Project, but Construction Manager shall have no claim for any other compensation for such delay. Should the schedule for the Project be extended due to an act of God as discussed above, the Construction Manager’s performance contract shall be extended and the Construction Manager shall be compensated for this extension under the provisions of Article 4.2.4 of this Agreement.

**ARTICLE 2**  
**THE DISTRICT’S RESPONSIBILITIES**

2.1 The District shall provide full information regarding the requirements of the Project including the District’s objectives, constraints and criteria.

2.2 Prior to the commencement of the Preconstruction Phase for the Project, the District shall provide a financial plan and budget to be utilized by Construction Manager as set forth in Article 1.1.3 of this Agreement.

2.3 The District shall designate a representative (“District Representative”) to act on the District’s behalf with respect to each Project. The District, or the District Representative, if

authorized, shall render decisions promptly to avoid unreasonable delay in the progress of the Construction Manager’s services.

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

2.5 The services, information and reports required by Articles 2.1 through 2.4, inclusive, shall be furnished at District’s expense.

2.6 If the District observes or otherwise becomes aware of any fault or defect in the Project, or nonconformance with the contract documents, prompt notice thereof shall be given by the District to the Construction Manager.

2.7 The District reserves the right to perform work related to the Project with the District’s own forces and/or to award contracts in connection with the Project. The Construction Manager shall notify the District within ten (10) days of actual knowledge of the District’s intent to perform work related to the Project with the District’s own forces and/or to award contracts in connection with the Project, if any such independent action shall in any way compromise the Construction Manager’s ability to meet the Construction Manager’s responsibilities under this Agreement.

2.8 The District shall retain an Architect whose services, duties and responsibilities are described in the Agreement between the District and the Architect. The terms and conditions of the District-Architect agreement shall be furnished to the Construction Manager.

**ARTICLE 3**  
**CONSTRUCTION COST AND PROJECT BUDGET**

3.1 The Construction Cost of the Project shall be the total of the final contract sums of all of separate contracts of contractors for the Project, and shall not exceed the budgeted amount for the Construction Cost as set forth in the Project Budget.

3.2 Construction Cost shall not include the compensation of Construction Manager, the Architect and other consultants, general conditions, the cost of land, rights-of-way and other costs which are the responsibility of the District as provided in Article 2 hereof, inclusive.

3.3 The Project Budget has been established under Article 2.2 hereof by the allowance for construction. Construction Manager shall consult with the Architect and the District to suggest reasonable adjustments in the scope of the Project, and to suggest alternate bids in the Construction Documents to adjust the construction Project costs so that it does not exceed the Project Budget.

3.4 If the fixed limit of Construction Cost as set forth in the Project Budget is exceeded by the sum of the lowest figures from bona fide bids, the District shall (1) give written approval of an increase in such fixed limit, (2) authorize rebidding of the Project or portions of the Project within a reasonable time, (3) cooperate in revising the scope and the quality of the work as required to reduce the Construction Cost or (4) reject all bids and abandon the Project. In the case of items (2) and (3), Construction Manager, without additional compensation, shall cooperate with the

District and Architect as necessary, including providing services as set forth in Article I, to bring the Construction Cost within the fixed limit of the Project Budget.

3.5 With the District’s assistance, Construction Manager shall provide, on a monthly basis, a detailed cash flow tracking system for the Project. The system must be approved and accepted by the District. The Construction Manager shall update the cash flow spread sheet monthly or as required by the District.

Construction Manager shall provide for the District’s review and acceptance, a monthly report for the Project. This report shall show the status for the Project that is under construction pertaining to this contract. With the District’s assistance, the Construction Manager shall provide all construction related agenda items. Examples: change orders, notices to proceed, notice of completion, authorization to bid, award of contracts, etc.

**ARTICLE 4**  
**BASIS OF COMPENSATION AND PAYMENT**

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

**4.1 BASIC SERVICES FEE.**

4.1.1 The stipulated Not-to-Exceed Fee that shall be paid to the Construction Manager for providing all the services set forth in Article 1 shall be \$ [redacted] ([redacted] Dollars) or [redacted] % of the total Construction Cost, whichever amount is less (the “Basic Services Fee”). However, in the event that the Basic Services Fee exceeds the maximum schedule for Construction Management Fees, the Basic Services Fee shall be reduced accordingly.

**4.1.2 GENERAL CONDITIONS COSTS**

General Conditions as described in Article 5 shall be reimbursed at cost in accordance with Article 5 with the total not to exceed [redacted] % of the total Cost of Construction.

**4.2 PAYMENT**

**4.2.1 BASIC COMPENSATION PAYMENT:**

4.2.1.1 Pre-Construction Invoicing. Construction Manager shall invoice up to 35% of the Basic Services for the services set forth in Article 1 based on the actual level of completion, from the time the Construction Manager begins work on the Project to the commencement of the Construction Phase time the contractor is selected by the District.

4.2.1.2 Construction Invoices. Construction Manager shall invoice up to 55% of the Basic Services Fee based on the actual level of completion during the Construction Phase.

4.2.1.3 Project Retention. Construction Manager shall invoice 10% of the Basic Services Fee 35 days after the District files the last Notice of Completion for the Project.

4.2.2 GENERAL CONDITIONS PAYMENT

Construction Manager shall invoice General Conditions costs monthly during the duration of the construction work. All General Condition costs must be supported by an invoice, receipt, an employee time sheet, or other acceptable documentation.

4.2.3 PAYMENT OF INVOICES.

The District shall make payments to Construction Manager within thirty (30) days of receipt of the appropriate and approved invoice from Construction Manager.

4.2.4 ADDITIONAL COMPENSATION.

Construction Manager shall not be entitled to additional compensation unless there are unusual and unanticipated circumstances and only when approved in writing by the District, in advance of such services being provided. If the Construction Manager shall claim compensation for any damage sustained by reason of the acts of the District or its agents, Construction Manager shall, within ten (10) days after sustaining of such damage, submit to the District 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, the Construction Manager shall file with the 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 extra compensation is approved, extra compensation shall be computed at cost plus ten percent (10%) of billings to Construction Manager by Construction Manager’s consultants and for other costs incurred by the Construction Manager and at the following rates for Construction Manager’s employees:

Principal In Charge/Project Executive	\$	
Senior Consultant	\$	
Project/Senior Project Manager	\$	
Assistant Project/Construction Manager	\$	
Accountant	\$	
Contract Administrator	\$	
Cost Engineer (Estimator)	\$	

**ARTICLE 5**  
**GENERAL CONDITIONS**

Construction Manager shall provide the General Conditions for the Project. 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 the following:

CATEGORY:	EST. TOTAL:
Supervision	\$
Foreman	\$
Job Site Clerk (part time as required)	\$
Temporary trailer & storage container	\$
Temporary barricades and fences	\$
Temporary toilets	\$
Telephones, pay phone & facsimile machine	\$
Temporary utilities	\$
CPM Schedule	\$
As-built documents/field office equipment and supplies	\$
Engineering and staking	\$
Clean-up	\$
Truck expenses/travel/subsidence	\$
Security	\$
<b>TOTAL ESTIMATED COSTS</b>	<b>\$</b>

In no event shall the General Condition costs exceed % of the Construction Cost.

All General Condition items and services shall be billed at their actual cost, and the Construction Manager shall take all reasonable steps necessary to obtain the most competitive prices available for these items. If Construction Manager desires to be reimbursed for any other General Conditions costs not specifically set forth in this Article, prior to the commencement of the Construction Phase, Construction Manager shall submit a list of these General Condition items to the District for the District's approval. The cost of any additional items shall not be reimbursable unless advance written authorization is provided by the District to Construction Manager to obtain the item.

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

**6.1 TERMINATION OF CONSTRUCTION MANAGER'S SERVICES FOR CAUSE.**

The District may give seven (7) days written notice to Construction Manager of District's intent to terminate the Construction Manager's services 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) 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 District's notice. 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 and liquidated damages sustained by District due to such breach.

In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience in accordance with Article 6.3 below, and Construction Manager shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Construction Manager.

## **6.2 ABANDONMENT OF PROJECT.**

The District has the absolute discretion to suspend or abandon all or any portion of the work on a Project and may do so upon fourteen (14) days written notice to the Construction Manager. Upon notice of suspension or abandonment, Construction Manager shall immediately discontinue any further action on the Project. 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. In the event the District abandons or suspends the work on the Project, there shall be due and payable within thirty (30) days following such abandonment or suspension compensation for all approved services performed and all approved expenses incurred pursuant to this Agreement supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement plus any sums due the Construction Manager for approved extra services.

## **6.3 TERMINATION WITHOUT CAUSE (FOR CONVENIENCE).**

The District shall also have the right in its absolute discretion to terminate this Agreement in the event the District is not satisfied with the working relationship with Construction Manager or without cause following fourteen (14) days prior written notice from the District to Construction Manager. In the event that District chooses to terminate this Agreement for convenience or without cause, Construction Manager shall be compensated for all approved services performed and all approved expenses incurred pursuant to this Agreement supported by documentary evidence, including payroll records, and expense reports up until the date of the termination for convenience plus any sums due the Construction Manager for approved extra services. In addition to the compensation described above, Construction Manager shall also be reimbursed for reasonable termination costs through the payment of (1) 3% of the Construction Management Fees incurred to date if less than 50% of the Construction Management Fees have been paid; or (2) 3% of the remaining Construction Management Fees if more than 50% of the Construction Management Fees have 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.

## **6.4 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 agrees to continue the work diligently to completion. If the dispute is not resolved, Construction Manager agrees it shall neither rescind the Agreement nor stop the progress of the work, but Construction Manager's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the Projects have been completed, and not before.

## **6.5 DELIVERY OF DOCUMENTS.**

Upon any termination, abandonment or suspension, Construction Manager shall deliver to District all documents, files, reports, etc. (regardless of medium or format) related to the Project within ten (10) days of such termination, abandonment or suspension. Failure to comply with this requirement shall be deemed a material breach of this Agreement.

## **ARTICLE 7** **INDEMNIFICATION**

7.1 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 any person, firm or corporation employed by the Construction Manager or the District 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 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.

7.2 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 the 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 the District. 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, however, in the event that the 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 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.

## **ARTICLE 10** **CONSTRUCTION MANAGER NOT AN OFFICER** **OR EMPLOYEE OF DISTRICT**

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

## **ARTICLE 11** **INSURANCE**

11.1 The Construction Manager shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to the District which will protect Construction Manager and the District from claims which may arise

out of or result from Construction Manager’s actions or inactions relating to the Agreement, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

(a) The Construction Manager shall carry Workers’ Compensation and Employers Liability Insurance in accordance with the laws of the State of California in an amount not less than One Million Dollars (\$1,000,000).

(b) Comprehensive general and auto liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit, bodily injury and property damage liability per occurrence, including:

- 1. Owned, non-owned and hired vehicles;
- 2. Blanket contractual;
- 3. Broad form property damage
- 4. Products/completed operations; and
- 5. Personal injury.

(c) Professional liability insurance, including contractual liability, with limits of \$1,000,000, per occurrence. Such insurance shall be maintained during the term of this Agreement and renewed for a period of at least two (2) years thereafter and/or at rates consistent with the time of execution of this Agreement adjusted for inflation.

11.2 Each policy of insurance required in (b) 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.

**ARTICLE 12**  
**EXTENT OF AGREEMENT**

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

The parties, through their authorized representatives, have executed this Agreement as of the day and year first written above.

CONSTRUCTION MANAGER:



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

\_\_\_\_\_

DISTRICT:

Las Virgenes Unified School District

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

\_\_\_\_\_

**EXHIBIT “A”**  
**PROPOSED PROJECT SCHEDULE**