

**CONSTRUCTION MANAGEMENT SERVICES AGREEMENT**  
**TK & KINDER CLASSROOM MODERNIZATION PROJECT**

This Construction Management Services Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2024 by and between Laguna Beach Unified School District (hereinafter “District”) and \_\_\_\_\_ hereinafter referred to as “Construction Manager”) for construction management services relating to a multi-prime construction contract delivery method for construction of TK and Kinder Classroom Modernization Project located in Laguna Beach, California (the “Project”).

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

Construction Manager represents to 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; administration of bidder prequalification; contract document development to implement a multi-prime delivery method; bid evaluation; project scheduling; cost benefit analysis; administration of contract pay applications; administration of contract insurances and lien waivers; 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 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 and District understand and acknowledge that the State Allocation Board (“SAB”) has not yet adopted a policy for construction management services applicable to the Leroy F. Greene School Facilities Act of 1998 (Education Codes section 17070.10, et seq.) (“New State Program”). Nevertheless, Construction Manager and District have attempted to include provisions in this Agreement, which the parties currently anticipate shall be included in any new policy for construction management services applicable to the New State Program. Construction Manager and District further agree that in the event 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. In the event that any New SAB Policy materially alters the risks assumed by, or requires additional work of, the Construction Manager under this Agreement, the District and Construction Manager agree to negotiate in good faith to mitigate such risks and additional work to Construction Manager as a result thereof.

A. Basic Services:

1. Provide work which shall comply with professional standards and applicable requirements of federal, state and local law.
2. Advise the District as to the regulatory agencies that have jurisdiction over the Project, and as to coordination with and implementation of the requirements of the regulatory agencies, including without limitation the Division of the State Architect.
3. If necessary and subject to the District's written approval, contract for or employ, at Construction Manager's expense, sub-consultant(s), to the extent deemed necessary for Construction Manager's services. Nothing in the foregoing shall create any contractual relationship between the District and any sub-consultant(s) employed by the Construction Manager under terms of this Agreement. The Construction Manager shall provide the District a list of any proposed sub-consultants for the District's written approval prior to executing any subcontracts.
4. Cooperate with other professionals employed by the District for the design, coordination or management of other work related to the Project.
5. Chair, conduct and take minutes of periodic meetings and of construction meetings during the course of the Project. Construction Manager shall invite the District and/or its representative to participate in these meetings. Construction Manager shall keep meeting minutes to document comments generated in these meetings, but shall not be responsible for analyzing design issues raised in said meetings. Construction Manager shall attend meetings as required to present service deliverables (schedules, budget estimates, construction cost estimates, value engineering, constructability reviews, logistics coordination, etc.), and host two months of weekly preconstruction meetings at the District's offices during the Plan Check and Bidding Phase.
6. Be responsible for the professional quality and technical accuracy of all cost estimates, constructability reviews, studies, reports, projections, opinions of the probable cost of construction, and other services furnished by Construction Manager under this Agreement as well as coordination with all Master Plans, studies, reports, and other information provided by District to Construction Manager. Construction Manager shall, without additional compensation, correct or revise any errors or omissions in materials it generates.
7. Maintain a log of all meetings, site visits or discussions held in conjunction with the work of this Project, with documentation of major

discussion points, observations, decisions, questions or comments. Assume weekly District-Architect Coordination meetings will be conducted during the entire length of time when the Project is in the construction phase. These shall be furnished to the District and/or its representative for inclusion in the overall Project documentation.

8. Any other services set forth in Section I of the Request for Proposal (“RFP”) issued by the District on January 22, 2024. Such services in Section I are incorporated herein by reference. Any discrepancies or ambiguities between Section I of the RFP and this Agreement shall be reconciled in favor of and be governed by this Agreement.

## **1.1 PRE CONSTRUCTION PHASE**

The services to be provided during the Preconstruction Phase for the Project shall commence with a notice to proceed from the District to the Construction Manager and shall include, without limitation, providing responsible reporting, documentation, recommendations and supervision of the following services: pre-construction scheduling, review and recommendations during 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.

1.1.1 Construction Management Plan. In consultation with the District’s architect (“Architect”), the Construction Manager shall prepare a Construction Management Plan (CMP) 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 approaches, and make recommendations to the District. The Construction Manager shall develop the CMP during the pre-construction phase at a time agreed to mutually with the District. Regular status updates are to be provided to the District during the development of the CMP by the Construction Manager. 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.

1.1.2 Master Project Schedule. The Construction Manager shall develop a Master Project Schedule for the Project, subject to approval by 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 “CM Services Project Schedule, Exhibit C” and attached hereto as “Exhibit C” and incorporated herein. The Master Project Schedule shall contain a critical path Master Construction Schedule for the Project and shall provide all major elements. The Master Project Schedule shall endeavor to utilize the completion date as identified in “Exhibit C.”

If necessary, 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.

1.1.3 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 Project Budget shall include the anticipated total of all of the separate contracts for the Project pursuant to Section 1.1.10 ("Construction Cost") as provided in this Agreement. The Construction Manager shall review any Project requirements of District, the District's schedule goals, and existing Project Budget data.

The Construction Manager shall make a report of the Project Budget to the District indicating: (1) shortfalls or surpluses in the Project 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 Project, if any, and to suggest alternate bids in Construction Documents to adjust the Construction Costs to conform to the Project Budget.

1.1.4 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.

1.1.5 Construction Management Constructability Review. The Construction Manager shall perform a constructability review of the 90% Construction Documents, utilizing a checklist type method such as Redicheck or some other form acceptable to District, and shall provide input to the District relative to means and methods of construction, duration of construction, and constructability. This checklist shall be made available to the District.

1.1.6 Coordination/Value Engineering Review. With respect to the Project, the Construction Manager shall review the Architect's 90% Construction Document submissions and provide written comments for cost reduction items of the various disciplines, including civil, structural, architectural, mechanical, electrical, HVAC, plumbing, and landscape. The report shall provide value engineering options for consideration by the District to make reasonable adjustments in scope to reduce the Construction Costs to conform to the Project Budget.

1.1.7 Communications. 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.

1.1.8 Cost Adjustment Sessions. The Construction Manager shall prepare for the District's approval a detailed estimate of Construction Cost, as defined in Article 3, developed by using estimating techniques, which anticipates the various elements of the Project. This Construction Cost estimate shall be prepared at 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 Project Budget including Article 1.1.6.

An approximate Construction Cost 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.

1.1.9 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.

1.1.10 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 Contractors and awarding individual bids. The Construction Manager shall inspect, review, revise, and assure proper delivery and assembly of the Project maintenance and operation manuals, material and equipment warranties, and the Project record set of plans and specifications. The Construction Manager is to 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, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination has been provided for phased construction.

1.1.11 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. The report is to include but not limited to Contractor monthly payments, Contractor allowance usage, Contractor vendor and supplier lien releases, and a per Contractor potential change order list with estimated costs.

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

1.1.13 Office of Public School Construction, Division of the State Architect 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 and any other applicable public agencies, especially those close-out documents required by the Contractors.

1.1.14 Professional Consultants. The Construction Manager shall assist the District, if required, in selecting and retaining the professional services of surveyors, material testing and inspection, soil testing and inspection, labor compliance monitoring, DSA inspectors, special consultants, commissioning consultant, and acoustical performance consultant, and coordinate their services during the construction phase.

## **1.2 PLAN CHECK AND BIDDING PHASE.**

1.2.1 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 prequalification of potential Contractors and ensure that all Contracts are competitively bid when required by law. Construction Manager is to coordinate directly with the District's staff in order to utilize the District's reprographics firm for bid document distribution.

1.2.2 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.

1.2.3 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. A report is to be provided to the District five (5) business days prior to the bid outlining all bidders who have verbally committed to provide the District with a bid for a specific prime package.

1.2.4 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.

1.2.5 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 by direct coordination with District staff to utilize the District's reprographics firm 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. Organize, create pdf. type files, and transmit to the District's staff to utilize the District's reprographics firm (cost for reprographics by District);
- (d) Arranging for delivery (cost for reprographics by District); and
- (e) Follow-up calls to the bidders.

The Construction Manager shall include the following requirements in all proposed Contract Documents:

- (a) The following bonding requirements:
  - (i) Performance bond at 100% of the Contract amount.
  - (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.

1.2.6 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 a specific prequalification conference, pre-bid "job walk" conference(s) as required, and shall familiarize bidders with the particular Project, bid documents, management techniques and with any special systems, materials or methods.

1.2.7 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. This includes, but is not limited to, the management of pre-bid RFI's and material/equipment substitution requests.

1.2.8 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.

1.2.9 Bidding of Work. All construction work for the Project shall be competitively bid when required by law and awarded in the least amount of bid phases as feasible depending on the ability of the Construction Manager to facilitate competitive bids within the Construction Cost budget. If the Project is funded with any State funds, Construction Manager shall comply with all applicable SAB requirements. A bid phase summary shall be submitted with each bid phase package listing only the low bidders and their Contract amounts, summed as a total committed cost. Construction Manager shall assist District and Architect to ensure compliance with Education Code Section 17076.11 with respect to Disabled Veteran Business Enterprise goals. In addition to any applicable State laws, the Construction Manager shall confirm that the bidding and procurement procedures for the Project comply with any

applicable requirements that may be tied to various funding sources including, but not limited to, federal funds or grants such as Community Development Block Grants.

1.2.10 Bid Evaluation. The Construction Manager in cooperation with Architect shall manage 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, and shall receive bids. The Construction Manager shall update the District's front end Contract Documents, "Bid Packet," and insert them into the Construction Documents.

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 represent 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 and/or exceed the SAB's standards (if applicable), the additional necessary work shall not entitle Construction Manager to any additional fee.

1.2.11 Rebidding. If any portion of the Project is anticipated to be State funded, Construction Manager shall only allow individual bid package category rebids as authorized by SAB policy.

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, subject to approval by the District, 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.

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

1.2.13 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, at the cost of the District, 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.

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

1.2.15 Notice Of Award and Notice To Proceed. The Construction Manager shall prepare and issue the Notice of Award to the Contractor after the Board of Education accepts the Contractor's bid and award a Contract. The District will prepare and issue a Notice to Proceed to the Contractor for each trade contract package only after the Contractor's agreement and required documents are provided to the District. The Construction Manager is to administer the request, tracking, collection, verification of correctness, and delivery of the Contractor's Contract and supporting documents to the District.

1.2.16 Contractor Prequalification. The Construction Manager shall assist the District in providing turnkey services for the administration of all aspects of prequalifying potential bidding Contractors and subcontractors for this PROJECT in accordance with Public Contract Code section 20111.6. Such services shall include, without limitation: creating advertisements, generating bidder interest, issuing prequalification questionnaires to all interested bidders, coordinating receipt of all prequalification questionnaires, evaluating questionnaires, checking references and confirming information contained in questionnaires, scoring all questionnaires, creating a summary log of scores using the District's template, making written recommendations to the District on Contractors and required subcontractors that are prequalified, confirming that the District has a sufficient pool of prequalified mechanical, electrical and plumbing subcontractors (as defined in Public Contract Code section 20111.6) for this PROJECT, ensuring Contractors and required subcontractors submit the prequalification documents as determined by the District (but not later than ten business days prior to the bid opening date), notifying all bidders whether they are prequalified to bid on the PROJECT or not as determined by the District (but not later than five business days prior to the bid opening date), and providing any other prequalification services reasonably requested by the District.

### **1.3 CONSTRUCTION PHASE.**

The Construction Phase for the Project shall commence within the month where the receipt by the bidder of the initial multi-prime construction Contract Notice to Proceed and shall continue until thirty-five (35) days after the recording of the last multi-prime construction Contract Notice of Completion for the Project or thirty-five (35) 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 Master Project Schedule. 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, creation of a Project construction schedule and regular monthly updates, conducting construction progress meetings, providing progress reports, processing Contractors' requests for information (RFI's), processing Contractor product material and equipment submittals, reviewing and recommending with the Architect the approval or disapproval of change orders and payments to the Contractors, and maintaining record keeping to assist the District in negotiations, mediation or arbitration of claims or disputes.

1.3.1 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. Construction Manager is to perform a pre-construction conference with the multi-prime Contractors after each bid phase, including potential rebid phases, is complete.

1.3.2 Contract Administration and Key Personnel. 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 District in order to complete the Project in accordance with the Contract Documents, this Agreement, and within the Project Budget. The Construction Manager shall provide sufficient organization, qualified and experienced personnel and management to carry out the requirements of this Agreement. The Construction Manager shall identify and maintain a competent staff at the Project site for the purpose of coordinating and providing general direction for the work and progress of the Contractors. The Construction Manager shall provide below a list of the key personnel to be assigned to this Project during the Construction Phase and the personnel are to be as outlined in the Construction Manager's proposal provided in response to the Request for Proposal (RFP). Written notice of any future changes in staff and personnel for the Project require the District's review and approval. The District may reasonably request changes in the staff and personnel proposed by the Construction Manager for the Project.

The Construction Manager agrees that the following personnel be designated as "Key Personnel", associated with the Project in the following capacities:

Superintendent: \_\_\_\_\_  
Project Manager: \_\_\_\_\_  
Project Engineer/Assistant Project Manager: \_\_\_\_\_

The Key Personnel listed above shall be dedicated to this Project full-time during the Construction Phase of the Project and shall not be involved with any other projects on behalf of the Construction Manager during said time. The Construction Manager shall not change any of the Key Personnel listed above without prior written approval by District, which approval will not be unreasonably withheld, unless said personnel cease to be employed by the Construction Manager. In either case, the District shall be allowed to interview and recommend approval of replacement personnel. If there shall be any approved changes in the Key Personnel listed above, the Construction Manager shall not charge the District any fees or other costs to bring any replacement personnel “up to speed” on the Project. Notwithstanding the foregoing, in the event that the Construction Phase does not start within three (3) months of the Construction Phase start date set forth in Exhibit “C”, Construction Manager shall endeavor to maintain the Key Personnel listed above on the Project, but does not guarantee their availability.

If any personnel fail to perform to the satisfaction of the District, then upon written notice by the District, the Construction Manager shall immediately remove that person from the Project and provide a temporary replacement. The Construction Manager shall, within thirty (30) calendar days, provide a permanent replacement person acceptable to the District.

1.3.3 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 with monitoring the certified payroll for the Project and tracking Prime Contractor vendor or supplier (20) Day Preliminary Notices and corresponding lien releases. 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.

1.3.4 Meetings. The Construction Manager shall coordinate and conduct preconstruction, construction and weekly job-site progress meetings with the Contractors and shall transcribe and distribute minutes to all attendees, the District, Architect and all other appropriate parties. The Construction Manager shall assist in the resolution of any technical construction issues.

1.3.5 Coordination of Technical Inspection and Testing. The Construction Manager shall coordinate with the District’s certified inspector all testing required by the DSA, 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.

1.3.6 Construction Observation. The Construction Manager shall observe and confirm 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 and Project Inspector regarding the status of such activity and whether the Contractor is complying with such requirements as set forth in the Contract Documents. 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.

1.3.7 Non-Conforming Work. The Construction Manager 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 District's 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 District's 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.

1.3.8 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.

1.3.9 Implementation of Master Project Schedule. The Construction Manager shall implement the Master Project Schedule and shall regularly update and maintain the Master Project 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 Master Project 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 Master Project Schedule as required to show current conditions and revisions required by the actual experience. Construction Manager is to issue a (3) Week Look Ahead schedule on a weekly basis to all Prime Contractors and issue a Master Project Schedule update to the District on a monthly basis.

1.3.10. Safety Programs. To the extent required by OSHA or any other public agency, Construction Manager shall obtain, review, and keep on file each Prime Contractor's MSDS and IIPP along with monitoring their implementation of the safety program and the performance of necessary safety meetings.

1.3.11. SWPPP Quality Assurance/Quality Control(QA/QC). The Construction Manager will cooperate and coordinate with the District's Quality SWPPP Provider (QSP) to the extent required to carry out monitoring Project conditions weekly or as needed during weather

events, maintain the Project SWPPP manual and ensure Contractors maintain onsite SWPPP program and Best Management Practices (BMP).

Construction Manager shall manage the oversight of the Contractor for the Rain Event Action Plan (REAP) as required within 48 hours of a forecast event. Construction Manager shall conduct the regular scheduled inspections. Risk levels which may require water testing etc. shall be provided by others.

1.3.12 Insurance. The Construction Manager shall receive, review, and track Certificates of Insurance and Additional Insured Endorsements of Insurance for all Prime Contractors. Construction Manager shall inform the District of any noted deficiencies in insurance or endorsements submitted.

1.3.13 Performance and Payment Bonds. The Construction Manager shall receive and review Performance and Payment Bonds from the Prime Contractors and forward them to the District prior to the District issuing a Notice to Proceed to the Prime Contractor. The bonds are to be provided to the District with the Prime Contractor Contracts. Construction Manager shall inform the District of any noted deficiencies in bonds submitted.

1.3.14 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. Construction Manager is to provide the District with a financial summary report for all Prime Contracts on a monthly basis.

1.3.15 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 provide a copy of the daily log as part of its monthly invoice for payment. The Construction Manager shall prepare and distribute the construction schedule updates to the Master Project Schedule on a monthly basis to maintain the Master Project 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.

1.3.16 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.

In addition to the current physical records maintained at the site, the Construction Manager shall maintain a complete electronic copy of all Contracts, drawings, specifications, addenda, change orders and other modifications. The electronic Project file shall be maintained by the Construction Manager on a mutually agreeable shared site such as “Sharepoint” or “The Box”. The District and other personnel as authorized will have real time access at all times to the Project documentation.

The Construction Manager shall maintain records onsite and 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 review the record as-built drawings.

1.3.17 Schedule of Values, Processing of Payments, and Lien Release Tracking. 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. The Construction Manager shall review with the Architect and make recommendations to the District pertaining to payments to the Contractors. Construction Manager is to verify Contractor certified payroll records are current and in good standing with the District’s Labor Compliance Consultant prior to the release of Contractor payments. All Contractor pay applications are to be provided in a single transmittal to the District on a monthly basis.

The Construction Manager is to provide to the District a contract financial summary log with the monthly Contractor payment application submittal. Also, the Construction Manager is to maintain and submit with the monthly Contractor payment application submittal a lien release log and a copy of the lien releases for the District’s records. The District will provide the Construction Manager with all (20) Day Preliminary Notices received for each Prime Contractor’s vendors or suppliers.

1.3.18 Evaluate Proposal Costs. The Construction Manager shall evaluate Contractors’ proposal costs and make a formal recommendation to the District regarding the acceptance of any proposals for a change order.

1.3.19 Negotiations of Change Order Costs and Time Extensions. The Construction Manager shall assist the District and the Architect representative in negotiating any change order costs and time extensions.

1.3.20 Change Order Reports. The Construction Manager shall not issue instructions contrary to the Contract between District and a Contractor, or between the District and Architect. The Construction Manager shall ensure that all changes to the Contract between the District and a Contractor shall be by change order executed by the District. Any communication between the Construction Manager and the Contractors shall not in any way be construed as binding on the District, or releasing the Contractor from fulfillment of any of the terms of the Contract. 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 change orders and their effect on the Contract price and Master Project Schedule as of the date of the report.

1.3.21 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 Master Construction 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 1.3 of this Agreement.

1.3.22 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.

1.3.23 Equipment Instruction Manuals and Warranties. The Construction Manager shall obtain all operations and maintenance manuals, warranties, and guarantees for all material and equipment installed in the Project required by the Contract Documents. All such materials, including maintenance and operation manuals, keys, attic stock, as-built documents shall be reviewed and delivered to appropriate District personnel.

1.3.24 Completion of Contracts and Project. When the Construction Manager considers a Contractor's work or a designated portion thereof complete, the Construction

Manager will notify and assist the Architect in preparing a list of incomplete or unsatisfactory items (“Punch-list”) and the Construction Manager will prepare 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 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.

1.3.25 As-Built Documents. The oversight, management and verification of the “as-built” document process shall be maintained on a monthly basis by the Construction Manager. 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. Final “as-built” documents shall be verified prior to the release of each Contractor’s retention and incorporated into the Project record documents.

1.3.26 Training Sessions. The Construction Manager shall coordinate and schedule training sessions as required by the Contract Documents with the District’s personnel and shall require that the Contractor’s obligation in providing this training is fulfilled.

1.3.27 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 if the nonperforming party is not taking satisfactory corrective action.

1.3.28 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.

1.3.29 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.

1.3.30 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 District in the move-in for the Project.



1.3.31 Building Information Modeling (BIM). The Construction Manager shall implement and facilitate the BIM program with the Trade Contractors and design team. Construction Manager shall act as the “lead” in preparing composite coordination drawings incorporating all Trade Contractors’ 3-D shop drawings, and shall utilize NavisWorks or similar software approved by Architect to compile these drawings into a composite 3-D model for weekly coordination, fly-through, and clash detection exercises. Construction Manager shall keep records of clashes and issues discovered. Trade Contractors shall attend weekly meetings on a schedule determined by the Construction Manager for the purpose of reviewing progress of the MEP coordination effort. Meetings will continue until all participating Trade Contractors’ clashes and coordination issues are resolved.

In addition, the Construction manager is required to attend an Architect-Engineer BIM design coordination meeting during preconstruction to become knowledgeable of the system models and the design intents. Note, the structural and MEPS system designs will be created in 3D to a level 200 by the design team and it will be the responsibility of the Construction Manager to bring the coordinated model up to a level 400 in coordination with the Prime Trade Contractors. All NavisWorks files in appropriate format to be turned over to the District at the conclusion of the BIM services.

1.3.32 DSA Project Inspection Card Requirements. 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 all the testing and inspections that are required for the completion of the Project.

1.3.32.1 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.

1.3.32.2 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.

1.3.32.3 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.

1.3.33 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 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 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.

1.3.34 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.

1.3.35 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

1.3.36 Final Completion and Project Report. The Construction Manager, in conjunction with the Architect and the District's 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 Contract Documents and the relevant Project data, and make recommendations as to final payment and the notice of completion to the Contractor(s) 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.

1.3.37 Assessment of Liquidated Damages. Construction Manager shall advise the District on any liquidated damages that may be assessed against any Trade Contractor for failure to comply with any scheduling requirements, failure to meet milestones or the Contract completion date or the 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 and its surety that liquidated damages are being assessed.

## **1.4 TIME.**

1.4.1 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 Project.

1.4.2 In the event the construction time requirements set forth in Section 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 \$1,000.00 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. Construction Manager shall not be responsible for delays by a Trade Contractor or any other entity not under the control or direction of the Construction Manager, unless the delay is caused by Construction Manager's negligence or breach of contract.

1.4.3 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. 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 may be compensated for this extension under the provisions of Section 4.4 of this Agreement. Any extensions of time or additional compensation shall first be approved in writing by the District.

## **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 The current Construction Cost will be established by the District after the initial estimate is provided by the Construction Manager and may be adjusted as directed by the District. The Construction Manager is to utilize this budget as set forth in Section 1.1.3 of this Agreement. An adjustment in the Construction Cost budget or the actual awarded construction Contract costs does not provide for additional service fees to be paid to the Construction Manager. The Construction Manager is to provide services to manage a project with an anticipated scope of improvements as included in the Construction Documents in accordance with 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 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.

2.9 The District shall obtain all necessary insurances relative to course of construction, builders all risk and property damage for the Project.

2.10 The District agrees to cause all trade Contractors to name the Construction Manager as an additional insured and to indemnify, defend and hold harmless the Construction Manager the same as it does the District using language mutually acceptable to the Construction Manager and the District.

### **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 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 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 Cost 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, 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 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.

With the District's assistance, the Construction Manager shall provide all construction related Board of Education agenda items. Examples: award of Contracts, authorization to bid or rebid, change orders, Notice of Completion, etc.

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

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

##### **4.1 BASIC COMPENSATION FEE.**

4.1.1 Construction Manager's Services shall be compensated as set forth in Exhibit "A" for services described in this Agreement (the "CM Fee Proposal Matrix"). No other fees or costs (construction management fees, project management fees, general conditions costs, field indirect costs, bare costs, etc.) shall be paid to the Construction Manager, other than in accordance with Articles 4.4 and 5.1 below, unless approved in writing by the District. Reference attached Exhibit "B" for specific General Conditions Costs for the Project.

4.1.2 The Basic Compensation Fee shall include all of the Construction Manager General Conditions Costs as described in Article 5.

##### **4.2 PAYMENT**

##### **4.2.1 BASIC COMPENSATION PAYMENT:**

4.2.1.1 Pre-Construction, Plan Check and Bidding Phase Invoicing. Construction Manager shall invoice the "Monthly Rate for Precon Services" amount set forth in Exhibit "A" entitled "CM Fee Proposal Matrix" of the Basic Services for the services set forth in Articles 1.1 and 1.2 in consecutive monthly increments not to exceed the total identified in Exhibit "A", from the time the Construction Manager receives the notice to proceed from the District. The District may request the Construction Manager extend Preconstruction Phase services in writing. In the event that the Preconstruction Phase services extend beyond the consecutive months set forth above, Construction Manager's compensation for any such extended Preconstruction Phase services will be paid monthly on a time and materials basis an amount not to exceed the "Monthly Rate for Additional "Precon" column amount set forth in

Exhibit “A”. All additional Preconstruction Phase services shall be accompanied by documents reasonably requested by the District to support all time and materials costs.

4.2.1.2 Construction Phase Invoices. Construction Manager shall invoice the “Monthly Rate for Construction Services” amount set forth in Exhibit “A” entitled “CM Fee Proposal Matrix” of the Basic Services Fee in consecutive monthly increments during the Construction Phase not to exceed the total value identified in exhibit “A.” The Construction Manager shall not provide Construction Phase services until the District provides written direction to proceed to the Construction Manager. Should completion of the Project extend beyond the date set forth in Exhibit “C” not arising from the fault or negligence of the Construction Manager, the District and Construction Manager shall agree in writing for any additional compensation to be paid to the Construction Manager. In no event shall the costs to be paid to the Construction Manager for extended completion of the Project pursuant to this Paragraph exceed the monthly rates set forth in Exhibit “A”.

4.2.1.3 Project Retention. Retention shall not be withheld from any invoice submitted by the Construction Manager.

#### **4.3 PAYMENT OF INVOICES.**

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

#### **4.4 ADDITIONAL COMPENSATION.**

Except as otherwise provided by this Agreement, Construction Manager shall not be entitled to additional compensation unless there are unusual and unanticipated circumstances and only when approved in writing by 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, make 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	\$ See Exhibit D
General Superintendent	\$ See Exhibit D
Project/ Construction Manager	\$ See Exhibit D
Assistant Project Manager	\$ See Exhibit D
Accountant	\$ See Exhibit D

Contract Administrator  
Cost Engineer (Estimator)

\$ See Exhibit D  
\$ See Exhibit D

The District, in its sole discretion, may request Construction Manager perform any additional services based on a monthly fee, rather than the hourly fees noted above. The monthly fee shall be approved by the District in writing before any additional services or other services that require the payment of additional compensation are performed by the Construction Manager. The monthly fee shall not be more than the amounts set forth in Exhibit “A”, provided that the same staffing levels and material resources that are required for the Additional Services will not exceed those staffing levels and material resources included in Basic Services.

## **ARTICLE 5**

### **GENERAL CONDITIONS**

#### **5.1 GENERAL CONDITIONS COSTS.**

5.1.1 All General Conditions Costs for the Project are set forth in Exhibit “B”. The Construction Manager shall confirm that all General Conditions set forth in Exhibit “B” are either provided by the District or included in the scope of work to be provided by Trade Contractors for the Project. Any additional General Conditions necessary for the Project are included in the Construction Manager’s Basic Compensation set forth in Article 4. The Construction Manager understands that, except as otherwise set forth in this Agreement, District shall not be obligated to make any other payments to Construction Manager for construction management services, which includes payment for any General Conditions Costs.

5.1.2 If completion of the Project extends beyond the mutually agreeable completion date and such delay arises from the Construction Manager’s fault or negligence, the Construction Manager shall not be entitled to any additional Construction Manager General Conditions Costs. If, however, such delay arises from the District’s officers, agents, employees, consultants, inspectors or Contractors’ actions or inaction or any unforeseen circumstances that are beyond the reasonable control of the Construction Manager, and should the Construction Management services then be requested by the District to continue in writing, the Construction Manager shall be paid at the discretion of the District either monthly as identified in Exhibit “A” or hourly as identified in Exhibit “D”.

## **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 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 the Project and may do so upon fourteen (14) day 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).**

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 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) 5% of the Construction Management Fees incurred to date if less than 50% of the Construction Management Fees have been paid; or (2) 5% 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 Project has been completed, and not before.

## **6.5 DELIVERY OF DOCUMENTS.**

Upon termination, abandonment or suspension, Construction Manager shall deliver to District all documents and matters related to the Project.

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

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

(a) Any and all claims under workers' compensation acts and other employee benefit acts with respect to Construction Manager's employees or Construction Manager's subcontractors' employees arising out of Construction Manager's work under this Agreement; and

(b) 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 Construction Manager or any person, firm or corporation employed by the Construction Manager upon or in connection with the Project, except for liability resulting from the sole or active negligence, or willful misconduct of the District, its officers, employees, agents or independent contractors who are directly employed by the District.

(c) Any loss, injury to or death or 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 Project, 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 Construction Manager at Construction Manager's 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 and judgment that may be rendered against the District, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

(d) Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement, and this Agreement shall not create any rights in persons not party to this Agreement, whether third party beneficiary, or otherwise.

**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 District which will protect Construction Manager and 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 a 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 with limits of \$1,000,000, per occurrence and \$2,000,000 aggregate. In addition, a \$3,000,000 umbrella liability policy is to be maintained throughout the term of the contract as specified below. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least three (3) 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 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 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 District prior to cancellation; and, shall waive all rights of subrogation. Construction Manager shall notify District in the event of material change in, or failure to renew, each policy. Prior to commencing work, Construction Manager shall deliver to 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, District may, at its sole discretion, secure such policy of insurance in the name of and for the account of Construction Manager, and in such event Construction Manager shall reimburse 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:

DISTRICT:

\_\_\_\_\_

Laguna Beach Unified School District

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

The following Exhibits are attachments and part of this Agreement:

- Exhibit A – 1 page – CM Fee Proposal Matrix
- Exhibit B – 1 page – General Conditions
- Exhibit C – 1 page – CM Services Project Schedule
- Exhibit D – 1 page – CM Services Billing Rates Schedule
- Exhibit E – 1 page – CM Milestone Activity Dates

**TK & Kinder Classroom Modernization Project**  
**Exhibit A - CM Fee Proposal Matrix**  
**RFP Issued January 23, 2024**

Project	Precon Duration Months	Const. Duration Months	Closeout Duration Months	Precon Start Date	Precon Finish Date	Const. Start Date	Const. Finish Date	Closeout Start Date	Closeout Finish Date
El Morro E.S.	7	3	2	11/04/24	06/13/25	06/16/25	08/15/25	08/18/25	10/20/25

Monthly Rate for Precon Services	Precon Total	Monthly Rate for Construction Services	Construction Total	Monthly Rate for Closeout Services	Closeout Total	Combined Total of Precon Const. Closeout
\$	\$	\$	\$	\$	\$	\$

Project	Precon Duration Months	Const. Duration Months	Closeout Duration Months	Precon Start Date	Precon Finish Date	Const. Start Date	Const. Finish Date	Closeout Start Date	Closeout Finish Date
Top of the World E.S.	7	3	2	11/03/25	06/12/26	06/15/26	08/14/26	08/17/26	10/19/26

Monthly Rate for Precon Services	Precon Total	Monthly Rate for Construction Services	Construction Total	Monthly Rate for Closeout Services	Closeout Total	Combined Total of Precon Const. Closeout
\$	\$	\$	\$	\$	\$	\$

## TK & Kinder Classroom Modernization Project

### Exhibit B - General Condition Expenses

RFP Issued January 23, 2024

Item No.	Description	Provided By
<b>1</b>	<b><u>SAFETY</u></b>	
1.1	SAFETY LABOR	In Trades
<b>2</b>	<b><u>MOBILIZE/DEMOBILIZE</u></b>	
2.1	INSTALL / MAINTAIN / REMOVE - Water & Waste Utility Infrastructure to CM Trailers	By District and or Trades
2.2	INSTALL / MAINTAIN / REMOVE - Electrical Infrastructure to CM & Inspector Trailers	By District and or Trades
2.3	INSTALL / MAINTAIN / REMOVE -gravel surfacing in front of CM's trailer and gravel access roads	In Trades
<b>3</b>	<b><u>TEMPORARY UTILITIES FOR CONSTRUCTION</u></b>	
3.1	TEMPORARY WATER INFRASTRUCTURE (CONSTRUCTION WATER)	Trades
3.2	TEMP. ELEC. INFRASTRUCTURE - construction site (poles, transformers, meters, etc.)	In Trades
3.3	POWER LINES/CORDS	In Trades
3.4	POWER CONSUMPTION- Construction Use and CM & Inspector Trailers	By District
3.5	WATER CONSUMPTION - Construction Use and CM & Inspector Trailers	By District
3.6	TEMP OFFICE SANITATION - CM & Inspector Trailers / jobsite	By District
3.7	TEMP DATA - CM internet infrastructure and data service for field office	By Construction Manager
3.8	TEMP PHONES - CM land line and mobile phones infrastructure and service for field office	By Construction Manager
<b>4</b>	<b><u>BARRIER &amp; ENCLOSURE</u></b>	
4.1	TEMPORARY CHAIN LINK	By District
4.2	PEDESTRIAN CANOPY	By Trades
<b>5</b>	<b><u>SECURITY</u></b>	
5.1	WATCHMAN/GUARD SERVICE	By District
<b>6</b>	<b><u>ACCESS/PARKING</u></b>	
6.1	TEMPORARY PARKING	By District
6.2	TEMP. STAIRS/LADDERS	In Trades
<b>7</b>	<b><u>CLEAN-UP &amp; GEN. LABOR</u></b>	
7.1	GENERAL CLEAN-UP	In Trades
7.2	TRADE CLEAN-UP	In Trades
7.3	TRASH REMOVAL/DUMP	By District and Trades
7.4	3 CY TRASH BIN FOR CM and INSP. TRAILERS	By District
7.5	DUST PALLIATION	In Trades
7.6	TEMP. DEWATERING	In Trades
7.7	EMERGENCY CLEAN-UP	In Trades
<b>8</b>	<b><u>TRAFFIC CONTROL</u></b>	
8.1	FLAGMEN	In Trades
<b>9</b>	<b><u>FIELD ENCLOSURES</u></b>	
9.1	ARCHT'S/INSP. OFFICE	By District
<b>10</b>	<b><u>PROJECT SUPPLY/EXPS</u></b>	
10.1	PRINT AND SHIP PLANS / SPECIFICATIONS	By District
<b>11</b>	<b><u>FINAL CLEAN-UP</u></b>	
11.1	FINAL CLEAN-UP	By District and or Trades
<b>12</b>	<b><u>RENTAL EQUIP./TOOLS</u></b>	
12.1	RENTAL EQUIP./TOOLS	In Trades
<b>13</b>	<b><u>TESTS &amp; INSPECTIONS</u></b>	
13.1	TESTS & INSPECTIONS	By District





# TK & Kinder Classroom Modernization Project

## Exhibit D - CM Services Billing Rates

RFP Issued January 23, 2024

### SCHEDULE

LABOR CLASSIFICATION	HOURLY RATE
ACCOUNTING	\$
ASSISTANT PROJECT MANAGER	\$
ASSISTANT SUPERINTENDENT	\$
CARPENTER	\$
CARPENTER FOREMAN	\$
CLERICAL	\$
ESTIMATOR	\$
FIELD SUPERINTENDENT	\$
GENERAL SUPERINTENDENT	\$
IT SUPPORT	\$
LABORER	\$
LABORER FOREMAN	\$
PROJECT ENGINEER	\$
PROJECT EXECUTIVE	\$
PROJECT MANAGER	\$
QUALITY CONTROL MANAGER	\$
SAFETY MANAGER	\$
SCHEDULER / COST ENGINEER	\$
SENIOR ESTIMATOR	\$
SENIOR PROJECT MANAGEMENT	\$
SENIOR FIELD SUPERINTENDENT	\$
TRUCKING / DELIVERIES	\$

**TK & Kinder Classroom Modernization Project**  
**Exhibit E - Milestone Activity Dates**  
**RFP Issued January 23, 2026**

Bid and Award Schedule for El Morro

<b>Item No.</b>	<b>Description</b>	<b>Start</b>	<b>Finish</b>
1	DSA Backcheck / CD Approval	7/1/24	12/6/24
2	Public Advertisement (Sundays)	12/8/24	12/15/24
3	Upload Bid Documents to Public Planwell Site	12/9/24	12/9/24
4	Non-mandatory Job Walks	12/11/24	12/18/24
5	Bidder Prequalification Due Date	1/10/25	1/10/25
6	Publish Prequalification List	1/17/25	1/17/25
7	RFI & Substitution Request Deadline	1/31/25	1/31/25
8	Final Addendum	2/7/25	2/7/25
9	Bid Due Date	2/13/25	2/13/25
10	Board Agenda Contract Award Recommendations Due	2/28/25	2/28/25
11	Board Approval of Contracts	3/13/25	3/13/25
12	Notice of Award Issued to Contractors	3/14/25	3/14/25
13	Notice to Proceed Issued to Contractors	3/21/25	3/21/25
14	Preconstruction Submittal Processing & Material Orders	3/21/25	6/13/25
15	Construction	6/16/25	8/15/25

\*Note Top of the World E.S. Bid and Award schedule to be determined, similar to the above activities and durations.