
AGREEMENT

BY AND BETWEEN

PERRIS UNION HIGH SCHOOL DISTRICT

AND

NEFF CONSTRUCTION, INC.

FOR

CONSTRUCTION MANAGEMENT SERVICES FOR THE

HERITAGE HIGH SCHOOL CLASSROOM AND RENEWABLE ENERGY ADDITIONS

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**CONSTRUCTION MANAGEMENT SERVICES AGREEMENT
BETWEEN
THE PERRIS UNION HIGH SCHOOL DISTRICT
AND NEFF CONSTRUCTION INC
FOR THE
HERITAGE HIGH SCHOOL CLASSROOM AND RENEWABLE ENERGY ADDITIONS**

This Agreement for Construction Management Services (“CM Agreement”), effective this 16th day of November, 2011, is made by and between the Perris Union High School District (“District”), a California public school district, and Neff Construction Inc (“Construction Manager”), a corporation authorized to conduct business under the laws of the State of California. District and Construction Manager, in some instances, are individually or collectively referred to herein as a party or the parties (“Party” or “Parties”).

RECITALS

A. The District intends to construct a new 2-story classroom building @ Heritage High School providing for approximately 14 additional classrooms, or the equivalent square footage of space. Renewable energy sources would be included as part of the classroom building construction, or provided via the addition of covered parking throughout the parking lot, or some combination thereof. Parking lot, including but not limited to ingress and egress, as well as offsite improvements that may include signalization would also be completed as part of this project. The Parties intend and agree that the Construction Manager shall provide construction management services in accordance with this CM Agreement (“CM Services”) for the construction of the Classroom Addition, Renewable Energy, Parking Lot, and Offsite Improvements @ Heritage High School as specified in Exhibit “A” hereto (“Project”). The “Scope of CM Services” for the Project is more specifically defined in the Scope of CM Services attached hereto as Exhibit A and incorporated into this Agreement by this reference.

B. The Parties acknowledge that the District has contracted with PJHM Architects (“Architect”) to provide architectural services to the Project. The District intends that the Architect will perform services as the architects of record for the various new construction and modernization projects.

C. The Construction Manager represents that it possesses the necessary personnel, professional qualifications, expertise, financial capability and licenses to perform the construction management services set forth in this Agreement. Based on Construction Manager’s representation that it is qualified and capable of providing the Construction Manager Services required by this Agreement, the District desires to retain the Construction Manager to perform Construction Management Services necessary for the Project as depicted and described on the basis of either multiple prime contracts or a single general-construction contract.

Now, therefore, in consideration of the foregoing and of the rights and obligations of the Parties specified herein, the Parties agree as follows:

AGREEMENT

ARTICLE I
AUTHORITY AND TERMS FOR CM SERVICES

Section 1.1 Agreement to Provide CM Services. The Construction Manager shall provide the CM Services required pursuant to this CM Agreement, all in accordance with all terms and conditions in this CM Agreement.

Section 1.2 Commencement of CM Services. The Construction Manager shall commence providing the CM Services for a Project that are required pursuant to this CM Agreement upon written notice to proceed from the District (“NTP”).

Section 1.3 Completion of Project. The Construction Manager shall endeavor to cause the Project to be commenced and completed by the applicable date established in this CM Agreement.

Section 1.4 Change in Scope of Project. The District may, in its sole discretion, reduce or change the scope of the Project or any of its Project Components (defined in Section 4.1), in which event, the Parties shall equitably adjust the Basic CM Fee (defined in Section 6.1) payable to the Construction Manager for the Project. Notwithstanding anything in this CM Agreement that might be construed to the contrary, absent any increase or expansion in scope of the Project, the Basic CM Fee payable to the Construction Manager shall not be increased as a result of any increase in the cost to construct the Project. For purposes of this Agreement, the “scope of the Project” shall include performance by the Construction Manager of any of those activities necessary to complete the tasks set forth in Exhibit A. An “increase or expansion in scope of the Project” shall mean the addition of or requirement for physical improvements to the Project beyond those contemplated by the Parties as part of the Project or expressly or implicitly included within the Project Construction Plans or other preliminary documents for the Project.

Section 1.5 Suspension or Abandonment of the Project. The District may, in its sole discretion, suspend all or any portion of the work on the Project, or abandon the Project in whole or in part. Any such suspension or abandonment shall be subject to the provisions of Article IX of this CM Agreement. For purposes of this CM Agreement: (i) the District shall be deemed to have abandoned the Project in whole if the District has ordered a permanent cessation of all work on the Project; and (ii) the District shall be deemed to have abandoned a portion of the Project if the District has ordered a permanent cessation of all work on such portion of the Project. As used in this Section “permanent cessation” shall mean cessation of all affected work with the intention by the District not to resume such work in the future.

Section 1.6 Guarantee Administration Services. Notwithstanding earlier termination of this CM Agreement, for a period of one year after Final Completion of the Project, upon request of the District and at no cost to the District, the Construction Manager shall initiate, coordinate and manage any work to be performed pursuant to the warranty(ies) or guarantee(ies) of any contractor on the Project. By agreeing to initiate, coordinate and manage such warranty or guarantee work for the District, the Construction Manager does not assume any duty or responsibility to perform such work. The requirements of this Section shall survive the early termination of this CM Agreement. For purposes of this CM Agreement, “Final Completion” shall be completion of a particular Project as evidenced by the recording of a “Notice of Completion” for the Project and completion of all work, including, without limitation, “punch-list” items, on the Project.

Section 1.7 Architect and Other Consultants and Contractors. The services, duties and responsibilities of the Architect shall be described in a separate agreement between the District and the Architect. The Construction Manager shall at all times reasonably cooperate with the Architect and all other consultants and contractors employed by the District in connection with the Projects.

ARTICLE II PROVISION OF CM SERVICES

Section 2.1 Scope of CM Services. The scope of the CM Services that the Construction Manager shall provide pursuant to this CM Agreement is set forth in this CM Agreement and in Exhibit A hereto. The Construction Manager acknowledges and agrees that the scope of CM Services shall be deemed and construed to include business administration and management services necessary to perform its work on the Project that are not necessarily described in Exhibit A, which the Construction Manager shall perform in an expeditious and economical manner consistent with the interests of the District. Subject to receipt of compensation as herein provided, the Construction Manager shall furnish at its sole cost and expense all technical and professional services, including labor, material, equipment, transportation, supervision and expertise, necessary to perform the CM Services described in Exhibit A. The Construction Manager shall diligently apply its skills, knowledge and experience to assist the District in completing the Project by the date set for completion and within the Total Project Budget.

Section 2.2 Additional CM Services. At any time during the term of this CM Agreement, the District may request that the Construction Manager provide additional CM Services related to the Project (“Additional CM Services”). As used herein, Additional CM Services shall mean any service by the Construction Manager that the District determines is desirable or convenient, or necessary for proper completion of the Project, but which the Parties did not reasonably anticipate at the time of execution of the “Project Authorization Letter.” The Construction Manager shall not perform any Additional CM Services without obtaining prior written authorization from the District, and the District shall not be responsible for payment for any Additional CM Services performed in the absence of such written authorization. The District shall pay for authorized Additional CM Services as provided in Section 6.4.

Section 2.3 Independent Contractor. The Construction Manager is an independent contractor and shall not be deemed or construed to be an employee, general agent or general representative of the District. Any limited agent or limited representative status conferred on Construction Manager pursuant to this CM Agreement shall extend only so far as is reasonably necessary for the Construction Manager to perform its duties and responsibilities pursuant to this CM Agreement. The personnel performing any of the CM Services pursuant to this CM Agreement on behalf of the Construction Manager shall at all times be under the Construction Manager’s exclusive direction and control. The Construction Manager shall pay all wages, salaries and other amounts due such personnel in connection with their performance of CM Services and as otherwise required by law. The Construction Manager shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers’ compensation insurance.

Section 2.4 Manner of Performing CM Services. Except as agreed by the Parties and set forth in this CM Agreement, the Construction Manager shall have the sole discretion to

determine the manner in which it will perform the CM Services. The Construction Manager shall comply with all federal, State of California (“State”) and local laws, rules, regulations and other governmental requirements applicable to the performance of the CM Services pursuant to this CM Agreement. The Construction Manager shall also substantially comply with all District rules, policies or other requirements applicable to presence on District property, including, but not limited to, policies regarding use of drugs, alcohol, and tobacco, and, in any situation where pupils are or may be present during the course of the Project, the District’s policy for criminal-history background checks.

Section 2.5 Standard of Care, Licenses. The Construction Manager represents and warrants that it has the professional skills, knowledge and experience of a construction manager experienced in construction of school facilities in the State and, therefore, is capable of undertaking and completing the duties and obligations required pursuant to this CM Agreement. The Construction Manager shall perform the CM Services and duties in conformance to and consistent with the standards generally recognized as being employed by construction managers experienced in construction of school facilities in the State. The Construction Manager further represents and warrants that it has all licenses, permits, qualifications and approvals of whatever nature as are legally required to practice its profession. The Construction Manager further represents and warrants that it shall keep all such licenses and approvals in effect at all times when performing CM Services pursuant to this CM Agreement.

Section 2.6 Limitation on Assignment and Subcontracting. All CM Services to be furnished pursuant to this CM Agreement shall be deemed to be professional services. As such, the Construction Manager shall have no right or power to assign, sublet, transfer or otherwise substitute its interest in, or its rights and obligations pursuant to, this CM Agreement without the prior written consent of the District.

Section 2.7 District Consultants. The District reserves the rights to employ other consultants in connection with the Project and to perform work related to the Project with its own forces. The Construction Manager shall notify the District in the event any such consultant or the District’s work forces have unreasonably interfered, or will unreasonably interfere, with the Construction Manager’s responsibilities pursuant to this CM Agreement. Upon receipt of any such notification, the District shall have the option to: (i) immediately cause the consultant or the District’s forces to cease the activities causing such unreasonable interference; (ii) waive all rights the District may have against Construction Manager in regard to the effect of such activities, including, without limitation, claims for delay; (iii) amend this CM Agreement and/or the Scope of CM Services to eliminate any existing or potential interference with the CM Services, in which event, if applicable, the Construction Manager’s compensation hereunder shall be adjusted accordingly; or (iv) if the District disagrees with the Construction Manager’s conclusion that District forces or consultants have unreasonably interfered, or will unreasonably interfere, with the CM Services, the District may decline to take action, in which event the Construction Manager may, in its discretion, pursue dispute resolution pursuant to Section 11.2 of this CM Agreement. In the event the Construction Manager pursues dispute resolution as described in item (iv) of the foregoing sentence, the Construction Manager shall continue to provide the CM Services in strict accordance with this CM Agreement during the pending dispute resolution process.

Section 2.8 No Waiver of District Rights. The Construction Manager shall be responsible for the professional quality, technical accuracy and the coordination of the CM Services. The District’s payment for any CM Services performed pursuant to this CM

Agreement shall not be construed to operate as a waiver of any rights the District may have pursuant to this CM Agreement or as a waiver of any cause of action arising out of the Construction Manager's performance of this CM Agreement.

Section 2.9 Review of CM Services. The Construction Manager shall allow the District representatives at any reasonable time and with reasonable notice to inspect or review the CM Services and all records related thereto maintained by Construction Manager in order to determine whether the CM Services are being performed according to the terms of this CM Agreement.

Section 2.10 Copies of Materials. The District shall have the right, at any reasonable time and after reasonable notice, to obtain for its records copies of all records, schedules and other materials that may be prepared by the Construction Manager pursuant to this CM Agreement, including, without limitation, additional copies of materials previously provided to the District. Except as may be provided herein, the Construction Manager shall provide requested copies of materials at the District's expense, which shall not exceed the reasonable direct costs of copying the materials.

ARTICLE III PROJECT COSTS AND BUDGETS

Section 3.1 Responsibility for Remaining Within Budgets. The Parties intend that, for the Project, the Actual Construction Cost (defined in Section 3.5) shall not exceed the Project Construction Budget (defined in Section 3.2) and that the total cost of the Project shall not exceed the Total Project Budget (defined in Section 3.2). The Construction Manager acknowledges and agrees that one of its primary responsibilities is to facilitate Final Completion of the Project in a manner resulting in the Actual Construction Cost being within the Project Construction Budget for the Project and the total cost of the Project being within the Total Project Budget. The District shall reasonably cooperate with value engineering or other efforts by the Construction Manager to fulfill such responsibility, provided that such efforts will not result in an adverse effect on the Project.

Section 3.2 Project Construction Budget.

(a) For purposes of this CM Agreement, the total budget for actual construction of the Project ("Project Construction Budget") shall be deemed to be the total of: (i) the sum (or until after completion of competitive bidding, the estimated sum) of the dollar amounts of the Trade Contracts or General Contract, as applicable, for the Project; (ii) any contingency established by the District for construction-related purposes; and (iii) the total of the Basic CM Fee and Reimbursable Costs (defined in Section 6.4). The Project Construction Budget shall include: (i) costs of land or rights-of-way; (ii) testing and inspection fees; (iii) asbestos consulting, testing and abatement costs (this item may be included in the Project Construction Budget upon approval by the District); (iv) off-site utility facilities (unless included within the scope of a Trade Contract or General Contract) or permanent utility services; (v) non-construction-related contingency amounts; (vi) any fee for Additional CM Services unless agreed by the Parties; and (vii) costs that are expressly the responsibility of the District. The Project Construction Budget shall not include compensation paid to the Architect, the Architect's consultants, or other consultants hired by the District.

(b) The Project Construction Budget for the Project is a part of, and included within, the total budget for such Project, which includes non-construction items related to or necessary for the Project (“Total Project Budget”). The District (in conjunction with the Architect) has established or will establish an estimated Project Construction Budget and an estimated Total Project Budget for the Project. During the development of the design for the Project, the District, Architect and Construction Manager shall monitor and review the design in relation to the estimated Project Construction Budget. The District, Architect and Construction Manager may agree during design development, after competitive bidding, or at any other time, to revise the Project Construction Budget for the Project. Any revision of the Project Construction Budget shall be subject to approval by the Board.

Section 3.3 Estimated Construction and Project Costs. Based on its review of Project Construction Plans or other conceptual plans discussed with the District and the Architect, the Construction Manager, prior to bidding of the Trade Contracts or General Contract, shall estimate the cost to construct the Project (“Estimated Construction Cost”). The Construction Manager shall, as soon as practicable, inform the District and the Architect if the Estimated Construction Cost exceeds the Project Construction Budget for the Project. The Construction Manager shall thereafter coordinate and conduct working sessions of the District, Architect and Construction Manager to identify measures, including possible alternative bids or revisions to the Project Construction Plans, that may be implemented to ensure that the Estimated Construction Cost and Actual Construction Cost do not exceed the Project Construction Budget for the Project. The Construction Manager, in conjunction with the District, shall coordinate with the Architect to accomplish such revisions to the Project Construction Plans and/or documents required for bidding of the Project (“Bid Documents”) as are necessary to ensure that the Estimated Construction Cost and the Actual Construction Cost do not exceed the Project Construction Budget for the Project. For the Project, the Construction Manager shall identify and inform the District as to any items that might result in the total cost of the Project exceeding the Total Project Budget. The Construction Manager shall take reasonable actions to assist the District and the Architect in identifying measures to ensure that the total cost of a Project does not exceed the Total Project Budget for the Project, so that the Project may stay within the established budget consistent with the funds made available to the District.

Section 3.4 Bids for Projects. All contracts for construction shall be let after competitive bidding if required by law. In the event, for the Project, the total amount of the lowest responsive and responsible bids received by the District for construction plus the amount of any District-approved allowance(s) for deferred bidding or any Project Component(s) (defined in Section 4.1) exceeds the Project Construction Budget, the District may: (i) within a reasonable time, authorize rebidding of that Project or any of the Project Components thereof; (ii) cooperate in revising the scope of the Project, or any Project Component or any Trade Contract thereof, in order to reduce the Actual Construction Cost to within the Project Construction Budget; or (iii) authorize an increase in the Project Construction Budget for that Project. In the event the District determines to reduce the scope of the Project or any Project Component or Trade Contract thereof, the Construction Manager shall, without additional compensation, cooperate with the District and the Architect as necessary to reduce the Actual Construction Cost to within the Project Construction Budget.

Section 3.5 Actual Construction Cost. The Construction Manager shall use reasonable means during the term of this CM Agreement to coordinate and manage the Project to assist the District and the Architect in their attempts to ensure that the actual cost of constructing the Project as measured at the time of Final Completion (“Actual Construction

Cost”) does not exceed the applicable Project Construction Budget. Because the Construction Manager may not have control over the costs of labor, materials, equipment or any competitive bidding or negotiating conditions, the Construction Manager does not hereby guarantee the amounts of any bids or negotiated prices, or that the Actual Construction Cost will not exceed the Project Construction Budget. The Construction Manager also shall not be liable for any increase in the Actual Construction Cost of a Project attributable to circumstances not within the reasonable control of the Construction Manager. However, at any time it appears that the Actual Construction Cost may exceed the Project Construction Budget, the Construction Manager shall, in coordinate with the Architect or other consultants hired by the Construction Manager, consult with the Architect in developing possible, feasible, alternative revisions to the Project or any Project Components that will be sufficient to reduce the Actual Construction Cost to within the Project Construction Budget

ARTICLE IV ADMINISTRATIVE FUNCTIONS

Section 4.1 Project Components. The Construction Manager, subject to District review and approval, shall determine the logical division of the Project into components (“Project Components”) for, among other reasons, bidding, construction and, if requested by District, beneficial occupancy of any portion(s) of the Project prior to Final Completion thereof.

Section 4.2 Payment of Contractors. The Construction Manager shall develop and implement, subject to District review and approval, a procedure for the review, processing and payment of invoices for progress and final payments to the prime contractors on the Trade Contracts (“Trade Contractors”) and the contractor on any General Contract (“General Contractor”), and resolution of disputes related thereto.

Section 4.3 Construction Manager Representatives. The Construction Manager hereby designates the person described in Exhibit “D,” or his or her designee, as its authorized representative for purposes of the Project (“CM Representative”). The CM Representative for the Project must and shall have the authority to act on behalf of the Construction Manager for all purposes of this CM Agreement and shall coordinate all phases of the CM Services for the Project. The CM Representative shall work closely and cooperate fully with the District Representative (defined in Section 5.4) and all local, State and federal government agencies or departments that have jurisdiction over the CM Services or the Project. The CM Representative shall at all reasonable times be available to the District Representatives and consultants for purposes related to the Project, including, without limitation, bidding issues, construction, and any disputes related thereto.

Section 4.4 Substitution of Key Personnel. The Construction Manager acknowledges and represents that the designated CM Representative is “key” personnel who will perform specific tasks, duties and services pursuant to this CM Agreement. In the event one or more of such key personnel are not able, or are unavailable, to continue in such capacity, the Construction Manager may substitute other personnel of at least equal skill, knowledge and competence subject to the District’s prior written approval of any such substitution. The District may require that the Construction Manager replace any of such CM Representative or other Construction Manager personnel in the event the District determines that such person has performed in an unsatisfactory manner.

Section 4.5 Progress Reports. The Construction Manager shall regularly report to the District regarding the progress made toward Final Completion, status of the cost, quality, scope, scheduling of the construction, and any other issues that arise in relation to the Project (each a "Progress Report"). Each Progress Report shall be in writing, shall be signed by the CM Representative, and shall be updated and provided to the District and the Architect on a bi-monthly (twice a month) basis. Each Progress Report shall specify any problems or incidents arising during the course of construction, including, but not limited to, property damage, injuries, defective work, improper coordination of work, and poor relations among Trade Contractors or any subcontractors on the Project. Each Progress Report shall include a summary of the Actual Construction Cost to date relative to the projected Project Construction Budget. Each Progress Report shall cover the period of time since the prior Progress Report and shall specify the status of any issues detailed in any prior Progress Report but not yet resolved. The regular timing of the Progress Reports shall not serve as a limitation on the Construction Manager's obligation to immediately notify the District of any anticipated or actual delay in construction of a Project, lack of conformity of the construction with the Project Construction Plans, or actual or anticipated cost of construction in excess of the Project Construction Budget.

Section 4.6 Construction Progress Meetings. The Construction Manager shall conduct meetings with the Trade Contractors or General Contractor, as applicable, the District Representative and other parties as directed by the District or as necessary in connection with the construction of the Project ("Construction Meetings"). Unless an alternative schedule is agreed upon in writing by the District and Construction Manager, the Construction Manager shall hold the Construction Meetings on a bi-weekly (twice a month) basis and on such other occasions as requested by the District. The Construction Manager, subject to District approval, shall establish a regularly-scheduled date and time for the Construction Meetings for the Project. The Construction Meetings shall encompass, but not be limited to, focused and informal discussions regarding the quality, scope, schedule, current progress, relevant cost issues, future objectives, and any issues that arise or incidents that occur during the construction of the Project. The Construction Manager shall, a reasonable time prior to each Construction Meeting, prepare and distribute an agenda for the Construction Meeting setting forth the topics for discussion and providing time for discussion of non-agenda items. The Construction Manager shall record and distribute minutes of such meetings to all attendees and such other parties as determined by the District.

Section 4.7 Construction Committee Meetings. The Construction Manager shall participate in meetings with the District Representative, the Architect, other District consultants, and other parties as directed by the District ("Construction Committee Meetings"). The District may in its discretion set the date and/or time of any Construction Committee Meeting. The Construction Manager shall come to each Construction Committee Meeting prepared to discuss status of the Project, issues or incidents related to the Project, and possible alterations or modifications to the Project or the Project Construction Budget for the Project. The Parties intend that the Architect shall record and distribute minutes of such meetings to all attendees and such other parties as determined by the District.

Section 4.8 Appearance at Hearings. If and when requested by the District, the Construction Manager, without additional compensation, shall attend and render assistance at public hearings or other meetings related to the Project or necessary to the performance of the CM Services. However, if Construction Manager provides such attendance and assistance for the Project pursuant to a request from the District made after Final Completion of the Project, the District shall compensate the Construction Manager in accordance with the "Schedule of

Personnel Rates for Personnel Billed as Additional CM Services” set forth in Exhibit “E” attached hereto.

Section 4.9 CM Records. The Construction Manager shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this CM Agreement, including, without limitation, the costs of administering this CM Agreement (“CM Records”). The Construction Manager shall keep such complete and accurate CM Records as are necessary for proper financial management related to this CM Agreement. All such CM Records shall, as applicable, be maintained in accordance with generally accepted accounting principles. The Construction Manager shall make the CM Records available at its offices at all reasonable times during the term of this CM Agreement and until the later of four years from the date of final payment pursuant to this CM Agreement, or, if an audit is commenced within such four-year period, until such time as the proceedings related to the audit are complete. The Construction Manager shall provide access to the CM Records to the District, agencies or departments of the State, the State Auditor General, and any duly authorized representative of the federal government for purposes of audits, examinations, excerpts, and transactions. Upon request, and at the expense of the requesting party unless provided otherwise by law, the Construction Manager shall provide copies of such CM Records as are requested.

Section 4.10 Project Records. The Construction Manager shall maintain all documents related to the Project and performance of the construction work on the Project (“Project Records”), including, but not limited to, each contractor’s daily reports, submittals, change orders, requests for information (“RFIs”), correspondence, permits, insurance, testing and inspection reports, and safety records. All such Project Records shall, as applicable, be maintained in accordance with generally accepted accounting principles. The Construction Manager shall make the Project Records for the Project available at its offices at all reasonable times prior to Final Completion of the Project and until the later of four years from the date of final payment attributable to the Project pursuant to this CM Agreement, or, if an audit is commenced within such four-year period, until such time as the proceedings related to the audit are complete. The Construction Manager shall provide access to the Project Records to the District, agencies or departments of the State, the State Auditor General, and any duly authorized representative of the federal government for purposes of audits, examinations, excerpts, and transactions. Upon request, and at the expense of the requesting party unless provided otherwise by law, the Construction Manager shall provide copies of such Project Records as are requested.

ARTICLE V DISTRICT RESPONSIBILITIES

Section 5.1 Project Construction Plans. Upon reasonable request of the Construction Manager, the District shall furnish the Construction Manager with a reasonable quantity of Project Construction Plans for the Project.

Section 5.2 Information, Testing and Professional Services. The District shall provide all information regarding the Project as the Construction Manager may reasonably request from time to time. Except as otherwise provided in any Trade Contracts or other agreements related to the Project, the District shall pay for any structural, mechanical, chemical and other laboratory tests, inspections and reports for the Project that are required during the

course of construction by any applicable law, by any applicable permit or approval, or by the Project Construction Plans. The Construction Manager shall timely inform the District as to the need for any such tests, inspections and reports, and shall act on the District's behalf to obtain and schedule such services. The District, at its expense, shall secure such legal, accounting, insurance and other professional services as may be required to permit the District to perform its duties pursuant to this CM Agreement. Such professional services may include auditing services as required to verify applications for payment for work on the Project or to ascertain how or for what purposes the contractor(s) have used monies paid by or on behalf of the District.

Section 5.3 Accuracy of Information. The Construction Manager shall be entitled to reasonably rely upon the accuracy and completeness of the information, testing and services provided by the District pursuant to Section 5.2. However, the Construction Manager shall not be entitled to rely upon any such information, testing or services, or on any Project Construction Plans, that, to a reasonable construction manager experienced in construction of school facilities in the State, are obviously inaccurate, incorrect or incomplete. In the event the Construction Manager believes that any such information, testing or service provided pursuant to Section 5.2 is, or any Project Construction Plans are, inaccurate, incorrect or incomplete, the Construction Manager shall promptly provide written notice thereof to the District and the Architect, specifying the basis or bases for such belief. In the event the District independently becomes aware of any fault or defect in the construction of the Project, or of any nonconformance with the Project Construction Plans, the District shall promptly provide written notice thereof to the Construction Manager and the Architect.

Section 5.4 District Representatives. The District hereby designates the person described in Exhibit "D," or his or her designee, as its representative for purposes of this CM Agreement ("District Representative"). The District Representative, unless otherwise specified in writing to the Construction Manager, shall have the authority to act on behalf of the District for all purposes of this CM Agreement. The District Representative and such other persons or entities as he or she designates shall be permitted to observe and review the work of the Construction Manager as it proceeds. The District Representative shall furnish all required information, testing and services, and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the CM Services and construction of the Project.

ARTICLE VI CONSTRUCTION MANAGER FEES AND COSTS

Section 6.1 Compensation for CM Services. In exchange for the Construction Manager satisfactorily providing the CM Services for a Project in accordance with this CM Agreement, the District shall pay to the Construction Manager as provided in this Article: (i) the compensation for the CM Services ("Basic CM Fee") based on the calculated Construction Management and General Condition Services set forth in Exhibit "B" and section 6.2; and (ii) any Reimbursable Costs incurred by the Construction Manager in connection with the Project as authorized in advance by the District. The Parties Agree that the Basic CM Fee shall include all costs for General Conditions ("General Conditions Costs") and the Basic CM Fee shall to the extent possible is based on Actual Construction Costs.

Section 6.2 Basic CM Fee. The Basic CM Fee for the Project shall be apportioned and paid to the Construction Manager over the period commencing with the date set forth in the NTP for the Project and ending on the date set for completion of the Project (“Payment Period”). The maximum portion of the Basic CM Fee for the Project that the Construction Manager may invoice to the District in any particular month shall be determined by dividing the total Basic CM Fee for the Project by the number of months in the Payment Period. If the Payment Period is not evenly divisible into full-month periods, the remainder shall be deemed a full month for purposes of determining the maximum portion of the Basic CM Fee paid to the Construction Manager each month. In the event prior to completion of the Project the Basic CM Fee is increased or decreased in accordance with this CM Agreement, the maximum amount of the Basic CM Fee payable in any particular month thereafter shall be calculated by dividing the altered Basic CM Fee, less all amounts paid to date, by the remaining portion of the Payment Period for the Project. Likewise, in the event the schedule for Final Completion of the Project is modified or, for any reason, the work on the Project falls behind schedule, the maximum amount of the Basic CM Fee for the Project payable in any particular month thereafter shall be calculated by dividing the Basic CM Fee, less all amounts paid to date, by an increased Payment Period for the Project as reasonably determined by the District.

Section 6.3 General Conditions Costs. General Conditions of the Project are defined as those generic support activities which must be in place to support all construction aspects of the Project. All General Conditions Costs are included in the Basic CM Fee as described in Section 6.2 of this CM Agreement, and the Parties agree that no further compensation shall be paid to the Construction Manager for costs related to General Conditions unless otherwise approved by the District in Writing.

Section 6.4 Reimbursable Costs. For purposes of this CM Agreement, “Reimbursable Costs” shall mean those out-of-pocket expenses not attributable to General Conditions but necessary for completion of the Project, including, but not limited to, construction power, printing and reproduction costs. Reimbursable Costs shall include only those costs that: (i) are directly related to construction of the Project or provision of the CM Services, and (ii) are approved by the District in advance of such costs being incurred by the Construction Manager. The Construction Manager shall take all reasonable steps necessary to obtain the most competitive prices available for such Reimbursable Costs and shall invoice Reimbursable Costs to the District only at the actual cost incurred by the Construction Manager, without markup for overhead, profit or other purposes. The Construction Manager shall not incur any Reimbursable Costs without the prior written approval of the District, and the District shall not be obligated to pay any otherwise Reimbursable Cost in the absence of such prior approval. In accordance with Section 6.6, all Reimbursable Costs presented for reimbursement by the District shall be accompanied by documentation reasonably, specifically and adequately evidencing such costs.

Section 6.5 Additional CM Services. In exchange for the Construction Manager satisfactorily providing Additional CM Services in accordance with this CM Agreement as may be requested in writing by the District, the District shall compensate the Construction Manager for personnel reasonably necessary and used in the provision of Additional CM Services at the hourly rates set forth in Exhibit “C”. In accordance with Section 6.6, all Additional CM Services presented for payment by the District shall be accompanied by documentation reasonably, specifically and adequately evidencing such work.

Section 6.6 Invoicing and Payment.

(a) The Construction Manager shall provide separate invoices to the District for the Project in accordance with this Section. An invoice for the Project may combine the Construction Manager's requests for payment of one or more of the Basic CM Fee, Reimbursable Costs or Additional CM Services; provided that such amounts are separately itemized in the invoice. The Construction Manager shall in each invoice specifically describe the basis or bases for the compensation requested and shall submit the invoice to the District together with documentation reasonably, specifically and adequately supporting the Construction Manager's request for compensation as set forth in the invoice. Except as provided in this CM Agreement, the District shall review and pay all approved amounts set forth in an invoice within thirty days of receipt of the invoice.

(b) Notwithstanding anything to the contrary, within ten days of the receipt of an invoice for the Project from the Construction Manager, the District may request that the Construction Manager provide additional information or documentation as may be necessary for the District to verify and approve the compensation request as set forth in the invoice. The Construction Manager shall provide any such information or documentation requested by the District promptly, but in no event later than fourteen days after receipt of the District's request. In the event the District so requests additional information or documentation, the period in which the District must pay the invoiced amount(s) to Construction Manager shall be extended by the number of days taken by the Construction Manager to provide reasonably adequate supporting information or documentation.

Section 6.7 Retention. The District shall withhold from each invoice payment to the Construction Manager for the Project an amount equal to two and one-half percent (2.5%) of the Basic CM Fee included within such payment ("Retention") to ensure the satisfactory completion of the Construction Manager's obligations in regard to the Project. The Board in its sole discretion may determine that the District will not withhold Retention in regard to the Project if satisfactory progress has been made and the construction of the Project is more than 50% complete. In the event the Construction Manager does not satisfactorily perform the CM Services for the Project, or in the event of any dispute related to the Construction Manager's performance of the CM Services for the Project, the District may use the Retention to offset any increased costs or damages incurred by the District. This Section shall not be construed to limit other remedies available to the District.

Section 6.8 Final Payment. Upon Final Completion of the Project as provided in Section 1.3, the Construction Manager may submit a final invoice to the District for the balance of the Basic CM Fee for the Project, including any Retention withheld by the District. Subject to the provisions of Section 6.6 herein other than for timing of payment, the District shall pay the balance of the applicable Basic CM Fee to the Construction Manager within sixty days of the receipt of the final invoice.

Section 6.9 Interest on Late Payments. All amounts hereby payable by the District to the Construction Manager that remain unpaid after the applicable period allowed pursuant to this CM Agreement, at the option of the Construction Manager, shall be subject to accrual of interest at the rate of five percent (5%) per annum. The foregoing shall be construed to mean that interest shall not accrue during the pendency of any dispute in regard to any amount payable or during any period in which the District is awaiting receipt of additional information or documentation in support of an invoiced amount as provided in Section 6.6 herein.

Section 6.10 Disputed Amounts.

(a) If the District disputes any portion or amount set forth in an invoice submitted by the Construction Manager, the District shall provide written notice to the Construction Manager specifying each disputed amount and setting forth the basis or bases for the dispute in detail reasonably sufficient to explain the District's objection to payment of each disputed amount ("Notice of Payment Dispute"). Notwithstanding any such dispute, the District shall pay the undisputed portions or amounts of an invoice, if any, within the time required pursuant to this CM Agreement.

(b) The District shall provide a Notice of Payment Dispute to the Construction Manager not later than whichever of the following is applicable: (i) fourteen days after receipt of the invoice that includes the disputed amount(s); (ii) fourteen days after receipt of additional supporting information or documentation relating to the disputed amount(s) provided by the Construction Manager in accordance with Subsection (b) of Section 6.6; or (iii) failure of the Construction Manager to provide information or documentation relating to the disputed amount(s) requested by the District pursuant to Subsection (b) of Section 6.6 prior to the expiration of the maximum fourteen-day period specified therein for providing such information or documentation.

(c) Not later than ten days after receipt of any Notice of Payment Dispute, the Construction Manager shall provide to the District any justification of a disputed amount as the Construction Manager desires to submit. If the Construction Manager does not submit any justification of a disputed amount within such ten-day period, the Construction Manager shall be deemed to have withdrawn its request for such amount and it shall be deemed to be deleted from the invoice in which it had been included and may not be re-invoiced by the Construction Manager. If the Construction Manager does submit any justification of a disputed amount, not later than ten days after receipt of such justification, the District shall either pay the disputed amount or provide Construction Manager with a written explanation of District's continuing objection.

(d) In the event of a continuing objection by the District to payment of a disputed amount after exchange of information as provided above in this Section, the Parties may resolve the dispute in the manner permitted pursuant to this CM Agreement and applicable law, but the District shall not be required to pay the disputed amount prior to resolution of the dispute by the Parties. Any such extension of time for payment by the District shall be in addition to any extension of time available to the District pursuant to Section 6.6 herein. Notwithstanding the existence of, and pending resolution of, any claim, disagreement or dispute between the Parties in regard to any disputed amount, the Construction Manager shall continue to provide and perform the CM Services required pursuant to this CM Agreement.

ARTICLE VII TERMINATION AND SUSPENSION

Section 7.1 Termination by District.

(a) At any time and for any reason, the District may terminate this CM Agreement, in whole or in part, or may terminate any or all CM Services being or to be provided by the Construction Manager for the Project, by giving written notice to the Construction Manager ("District Termination Notice"). A District Termination Notice shall be effective fifteen days after receipt by the Construction Manager. In the event this CM Agreement is terminated

in part only, the Construction Manager shall continue to provide the CM Services required pursuant to the part of this CM Agreement not terminated, and the Basic CM Fee for the Project shall be equitably adjusted accordingly.

(b) Within fifteen days after receipt of a District Termination Notice, or as otherwise directed therein, the Construction Manager shall discontinue all CM Services to the extent set forth in the District Termination Notice. Within ten days after the effective date of any such termination, the Construction Manager shall deliver to the District any and all documents, schedules, estimates or other materials related to the portion terminated that have been prepared or obtained by the Construction Manager in performance of the CM Services, whether such materials are completed or in progress.

(c) In the event the District terminates this CM Agreement, in whole or in part, as a result of any material breach by Construction Manager of its obligations pursuant to this CM Agreement, the District's remedies for such breach shall not be limited except as may be provided by law and shall include the right to recover from the Construction Manager all of the District's related costs and expenses, including attorney's fees.

Section 7.2 Termination by the Construction Manager.

(a) The Construction Manager may terminate this CM Agreement only for sufficient cause, by giving written notice to the District ("CM Termination Notice"). Termination by the Construction Manager shall be effective thirty days after the District's receipt of the CM Termination Notice. Notwithstanding that it may have given a CM Termination Notice to the District, the Construction Manager shall continue providing all CM Services required for the Projects pursuant to this CM Agreement, unless all work has been suspended, until the effective date of the termination. Within ten days after the effective date of any such termination, the Construction Manager shall deliver to the District any and all documents, schedules, estimates or other materials that have been prepared or obtained by the Construction Manager in the performance of the CM Services, whether such materials are completed or in progress.

(b) Sufficient cause for termination of this CM Agreement by the Construction Manager may be shown only by one or more of the following: (i) the District has failed to pay to Construction Manager within ninety days of when due any undisputed amounts payable pursuant to this CM Agreement; (ii) the District has breached any other significant, material obligation owed to Construction Manager pursuant to this CM Agreement and failed to cure such breach in accordance with this CM Agreement; (iii) as a result of circumstances not within the control of the District and the Construction Manager, all work the Project ceases and does not recommence within a period of one-hundred and twenty days; or (iv) the District suspends all work on the Project and does not order work to recommence within a period of one-hundred and twenty days. Any dispute regarding the Construction Manager's right to terminate this CM Agreement and/or whether sufficient cause for termination exists shall be resolved as provided in this CM Agreement and applicable law.

(c) If the District, within thirty days after receipt of the CM Termination Notice, cures the reason for termination as stated in the CM Termination Notice, this CM Agreement shall continue in full force and effect and the Construction Manager shall continue to provide the CM Services as required pursuant to this CM Agreement. At any time after the receipt of the CM Termination Notice, the District may earlier terminate this CM Agreement by providing written notice to the Construction Manager to terminate the CM Services on a specific date that

is prior to the effective date of termination pursuant to the CM Termination Notice. In the event this CM Agreement is terminated pursuant to this Section, the Construction Manager shall be compensated for those CM Services and Additional CM Services provided up through and including the effective date of the termination.

Section 7.3 Procurement of Similar Services. The District may procure, upon such terms and in such manner as it deems appropriate, services similar to or in replacement of those CM Services terminated in accordance with this CM Agreement. The District shall in such event have the right to use as it may determine, and to provide to the person or entity providing such similar or replacement services, any and all documents, schedules, estimates or other materials prepared or obtained by the Construction Manager pursuant to this CM Agreement.

Section 7.4 Compensation After Termination. Upon termination of this CM Agreement, in whole or in part, or any of the CM Services for any of the Projects, the District shall compensate the Construction Manager, as provided in Article VI, for all CM Services satisfactorily performed prior to the effective date of the termination. In the event termination is the result of any District Termination Notice, absent a material breach of this CM Agreement by the Construction Manager, the District shall also pay to the Construction Manager its reasonable costs of terminating its work and for the work in progress by the Construction Manager at such time. The compensation paid to the Construction Manager shall not include any potential or future profits or overhead attributable to CM Services the Construction Manager would have performed if not for the termination. Consistent with Section 6.6, the Construction Manager shall provide documentation reasonably, specifically and adequately evidencing the costs that the Construction Manager believes are payable by District after termination. In the event the termination is not effective with respect to the entire Scope of CM Services, the District shall continue to compensate the Construction Manager in the manner set forth in Article VI for those CM Services not terminated.

Section 7.5 Compensation After Suspension. If the District suspends all work on the Project, the Construction Manager shall not be entitled to payment of any portion of the Basic CM Fee for the Project during the period of such suspension except for CM Services satisfactorily provided prior to such suspension or for work or services as authorized in writing by the District and necessary for security or maintenance of work in place. If the District suspends work on the Project in part only, the Construction Manager shall not be entitled to payment of any portion of the Basic CM Fee attributable to the suspended part of the Project during the period of such suspension except for CM Services related to the suspended part of the Project satisfactorily provided prior to such suspension. If the District recommences work on the Project or part thereof suspended, the District shall also resume paying the Basic CM Fee to the Construction Manager in accordance with Article VI. If the District recommences work on the Project or part thereof suspended subject to a reduction in scope of the work, the compensation of the Basic CM Fee shall be equitably adjusted and set forth in a revised Project Authorization Letter. Subject to Construction Manager's compliance with Section 7.6, the District shall compensate the Construction Manager as provided in Article VI for any Additional CM Services or Reimbursable Costs provided at the request of the District during any suspension.

Section 7.6 Reductions During Suspension. If any suspension of the Project, in whole or in part, exceeds or is anticipated by the District to exceed fifteen days, and unless the Parties have agreed that the Construction Manager shall retain specific staff during the period of suspension, the Construction Manager shall reassign the personnel assigned to the Project or

portion thereof suspended. In addition, the Construction Manager shall make all reasonable efforts to reduce or eliminate the General Conditions Costs incurred during the period of any suspension. If the District thereafter resumes work on the Project or portion thereof suspended, unless the scope of the Project has been reduced, the Construction Manager shall re-staff the Project to the same level as immediately prior to the suspension. In such event, the Construction Manager shall make a good faith attempt to re-staff the Project with as many of the personnel previously assigned to the Project as is then practical. If individuals who were assigned to the Project at the time of suspension are not reasonably available at the time work on the Project is resumed, the Construction Manager shall assign other personnel of similar skill and experience.

ARTICLE VIII INSURANCE AND INDEMNIFICATION

Section 8.1 Indemnification by Construction Manager. The Construction Manager shall defend, indemnify and hold-harmless the District and its Board members, officers, employees, and agents (collectively, "District Agents" excluding the District's Architect) from and against any and all claims, demands, actions, damages, losses, costs (including, without limitation, attorney's fees and expenses), expenses and other liabilities of any nature whatsoever (including, but not limited to, damage to property and injury to any person, including death) to the extent arising from performance of this CM Agreement by the Construction Manager. Any defense of the District and/or District Agents shall be by qualified and appropriately experienced legal counsel reasonably acceptable to the District, but selected and retained by the Construction Manager at its sole cost. Notwithstanding anything to the contrary, the Construction Manager shall also pay all costs related to the District's own legal counsel monitoring and, if necessary, participating in any defense of the District and/or any of the District Agents conducted by the Construction Manager pursuant to this Section. The Construction Manager's obligations pursuant to this Section shall include the obligation to defend, indemnify and hold-harmless the District and District Agents with respect to any and all Workers' Compensation claims, demands, actions, liabilities and expenses, arising from or connected with services performed by or on behalf of the Construction Manager. The Construction Manager shall not be liable pursuant to this Section for any claims, demands, actions, damages, losses, costs, expenses or other liabilities to the extent resulting from any negligent act or omission, or willful misconduct, of the District and/or the District Agents. The Construction Manager's duty to indemnify the District and the District Agents pursuant to this Section shall survive the expiration or termination of this CM Agreement and/or the CM Services.

Section 8.2 Construction Manager Insurance.

(a) The Construction Manager shall obtain and maintain during the term of this CM Agreement all policies of insurance coverage as may be required pursuant to law and this Section. The insurance coverage to be maintained by Construction Manager pursuant to this Section shall be provided in the form of separate policies for each Project, unless otherwise agreed in writing by the District, but in no event shall any claim or recovery on one Project reduce or eliminate required coverage on any other Project. Each such insurance policy shall be primary and not contributing with respect to any insurance or self-insurance programs covering or maintained by the District and/or any of the District Agents. Insurance proceeds received by the Construction Manager attributable to claims or damages for which the District is liable shall serve to offset the District's liability for such claims or damages. Maintenance by the Construction Manager of the insurance policies required pursuant to this Section is a material

part of the consideration given to the District for this CM Agreement and any failure by the Construction Manager to maintain or renew such policies as provided herein shall be deemed a material breach of this CM Agreement. If the Construction Manager fails to maintain the insurance policies as required pursuant to this Section, the District may, in its discretion, obtain and maintain such insurance coverage as it determines necessary and withhold funds from the Construction Manager due hereunder, without liability or recourse by the Construction Manager, to pay the cost of such insurance coverage.

(b) Prior to providing the CM Services pursuant to this CM Agreement, the Construction Manager shall provide to the District duly authorized and executed certificates of insurance evidencing that such insurance policies are in effect (each a "Certificate of Insurance"). In addition, within fifteen days after the Effective Date, the Construction Manager shall provide to the District copies of all insurance policies required pursuant to this Section. The District shall review the insurance policies and Certificates of Insurance required pursuant to this Section to determine whether they comply with the requirements of this CM Agreement. The Construction Manager shall provide updated Certificates of Insurance to the District for each renewal of an insurance policy required pursuant to this CM Agreement.

(c) The insurance policies required pursuant to this Section shall be issued by one or more insurers licensed to do business in this State and having an A.M. Best Company rating (Best's Rating) of not less than an "A Minus" and Financial Size Category of not less than "IX." Each insurance policy and Certificate of Insurance shall expressly specify that the insurer shall notify the District not less than thirty days prior to any cancellation, termination, reduction in coverage, or expiration without renewal of the policy. Language in any policy or Certificate of Insurance to the effect that the insurer shall "endeavor" to provide such notice shall not be acceptable.

(d) The insurance policies required pursuant to this Section shall include the following:

(i) *Liability Insurance.* The Construction Manager shall obtain and maintain during the term of the CM Agreement a policy of broad-form commercial general liability and property insurance, written on an "occurrence" basis, each providing coverage with a combined single limit of not less than two million dollars (\$2,000,000) for all activities conducted by Construction Manager pursuant to this CM Agreement ("Liability Policy"). If any aggregate limit applies (whether products/completed operations or all other loss), not less than two million dollars (\$2,000,000) for each aggregate shall apply specifically to this Project. No self-insured retention shall be permitted without the express consent of the District. Each Liability Policy shall contain a cross-liability endorsement and a waiver of the insurer's rights of subrogation against the District. Each Liability Policy shall name each of the District and the District Agents as an additional insured and shall include coverage as appropriate to protect the interests of the District, the District Agents and the Construction Manager, which, at a minimum, shall include coverage for property damage (including pollution liability), injury to any person (including death), contractual liability assumed by the Construction Manager pursuant to Section 8.1, premises, operations, products and completed operations liability. Prior to commencing work pursuant to this CM Agreement, the Construction Manager shall provide to the District, in addition to the Certificates of Insurance required pursuant to this Section, a copy of each Liability Policy.

(ii) *Vehicle Liability Insurance.* The Construction Manager shall obtain and maintain during the term of this CM Agreement a policy of business vehicle liability insurance with a combined single limit of not less than two million dollars (\$2,000,000) per occurrence (“Vehicle Liability Policy”). If any aggregate limit applies, not less than two million dollars (\$2,000,000) shall apply specifically to this Project. Each Vehicle Liability Policy shall name each of the District and the District Agents as an additional insured, and shall contain a cross-liability endorsement and a waiver of the insurer’s rights of subrogation against the District and the District Agents. Such insurance shall include coverage for owned, hired and non-owned vehicles.

(iii) *Workers’ Compensation Insurance.* The Construction Manager shall at all times during the term of this CM Agreement maintain workers’ compensation insurance in accordance with Section 3700 *et seq.* of the Labor Code. The Construction Manager shall also obtain and maintain during the term of this CM Agreement a policy of employers’ liability insurance with limits of not less than one million dollars (\$1,000,000) per incident.

(iv) *Professional Liability Insurance.* The Construction Manager shall obtain and maintain during the term of this CM Agreement a policy of professional liability insurance for the Project with a combined single limit of not less than two million dollars (\$2,000,000) per occurrence (“Professional Liability Policy”). The Professional Liability Policy shall provide coverage for claims arising out of the performance of the CM Services pursuant to this CM Agreement. If an aggregate limit applies, not less than two million dollars (\$2,000,000) shall apply specifically to this Project.

Section 8.3 Indemnification by District. The District shall defend, indemnify and hold-harmless the Construction Manager and its officers, employees, contractors, subcontractors, consultants, agents or other representatives (collectively, “CM Agents”) from and against any and all claims, demands, actions, damages, losses, costs (including, without limitation, attorney’s fees and expenses), expenses and other liabilities of any nature whatsoever (including, but not limited to, damage to property and injury to any person, including death) to the extent arising from any negligent act or omission or willful misconduct by the District in connection with its performance of this CM Agreement. Any defense of the Construction Manager and/or CM Agents shall be by qualified and appropriately experienced legal counsel reasonably acceptable to the Construction Manager, but selected and retained by the District at its sole cost. The District shall not be liable pursuant to this Section for any claims, demands, actions, damages, losses, costs, expenses or other liabilities to the extent resulting from any negligent act or omission, or willful misconduct, of the Construction Manager and/or the CM Agents. The District’s duty to indemnify the Construction Manager and the CM Agents pursuant to this Section shall survive the expiration or termination of this CM Agreement and/or the CM Services.

ARTICLE IX PROHIBITED INTERESTS

Section 9.1 Solicitation. The Construction Manager represents and warrants that it has not: (i) employed or retained any entity or person, other than a bona fide employee working solely for the Construction Manager (“BFE”) to solicit or secure this CM Agreement; (ii) paid or agreed to pay any entity or person, other than a BFE, any fee, commission, percentage, or similar compensation for soliciting, securing or entering into this CM Agreement; or (iii) given,

granted or promised any gift or other consideration to any entity or person, other than a BFE, contingent upon or resulting from soliciting, securing or entering into this CM Agreement. For breach or violation of this warranty, the District shall have the right, without liability or recourse by the Construction Manager, to rescind or void this CM Agreement.

Section 9.2 Conflict of Interest. For the term of this CM Agreement, no Board member, officer, employee or agent of the District, during the term of his or her service with the District, shall have any direct interest in this CM Agreement, or obtain any present or anticipated material benefit arising herefrom. This provision shall not apply to the Construction Manager in the event, and to the extent, it is determined that the Construction Manager is an agent of the District as a result of being a Party to this CM Agreement.

Section 9.3 Employment of District Personnel. The Construction Manager shall not employ District personnel regardless of whether such employment might otherwise occur outside any such employee's regular District working hours or on weekends, holidays or vacations. Furthermore, the Construction Manager shall not employ any person who was on the District's payroll within one year prior to the date of execution of this CM Agreement if such employment results from, is dependent upon, or was a factor in the Construction Manager securing this or any other agreement(s) with the District.

Section 9.4 No Bidding or Performance of Work. The Construction Manager shall not submit a bid to perform any work on the Project or perform any work for any contractor on the Project.

ARTICLE X INTERPRETATION

Section 10.1 Time of Essence. Time is of the essence with respect to this CM Agreement and each provision herein.

Section 10.2 Incorporation. All exhibits referenced herein or attached hereto, and all Recitals stated herein, are hereby incorporated as operative and effective parts of this CM Agreement.

Section 10.3 Captions and References. The captions or headings set forth in this CM Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any Article, Section, Subsection, or other provision of this CM Agreement. Any reference in this CM Agreement to an Article, Section or Subsection, unless specified otherwise, shall be a reference to an Article, Section or Subsection of this CM Agreement.

Section 10.4 Drafting of CM Agreement. In interpreting this CM Agreement, it shall be deemed to have been prepared by the Parties jointly and no ambiguity shall be resolved against either Party on the premise that it or its attorneys were responsible for drafting this CM Agreement or any particular provision hereof.

Section 10.5 Entire Agreement. This CM Agreement sets forth the entire agreement and understanding concerning the provision by the Construction Manager to the District of CM Services for the Project and supersedes and replaces all prior discussions and agreements, written or oral. Each Party acknowledges that the other Party and the other Party's agents,

attorneys and other representatives have not made any promise, representation, or warranty whatsoever, express or implied, other than those contained herein to induce the execution of this CM Agreement and acknowledges that this CM Agreement has not been executed in reliance upon any promise, representation, or warranty not contained herein.

Section 10.6 No Third Party Beneficiaries. The Parties have entered into this CM Agreement solely for their own benefit, and no third party shall be entitled, directly or indirectly, to base any claim or to have any right arising from, or related to, this CM Agreement.

Section 10.7 Severability. If any Article, Section, subsection, paragraph, sentence, clause or phrase contained in this CM Agreement shall, for any reason, become or be held by a court of competent jurisdiction to be illegal, null or void or against public policy, the remaining Articles, Sections, subsections, paragraphs, sentences, clauses and phrases contained in this CM Agreement shall not be affected thereby and shall, to the extent possible in light of the illegal, null or void language, continue in full force and effect.

Section 10.8 Waiver. The failure of a Party at any time to require a performance by any other Party of any provision hereof shall not affect in any way the full right to require such performance at any time thereafter. The waiver of any breach of any provision of this CM Agreement by a Party shall not be deemed to be a waiver of any preceding or subsequent breach of the same or any other provision of this CM Agreement.

ARTICLE XI DISPUTE RESOLUTION

Section 11.1 Governing Law and Venue. This CM Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State. Any arbitration, litigation or other proceeding arising out of or related to this CM Agreement shall be initiated and conducted only in the County of Riverside.

Section 11.2 Dispute Resolution. The Parties desire to quickly and cost-effectively resolve any disputes related to the interpretation or enforcement of this CM Agreement. Therefore, each Party shall make best efforts to resolve informally any such disputes. If the Parties are able to agree on the terms and procedures therefor, the Parties may agree that the informal resolution attempts will include mediation of any such dispute. If, not less than thirty calendar days after first making informal attempts to resolve any such dispute, the informal attempts have been unsuccessful, (or, if the Parties have agreed to mediation, after termination or completion of mediation without resolution of the dispute) either Party may thereafter initiate litigation or other proceedings as deemed appropriate by such Party.

Section 11.3 Attorneys' Fees. If either Party commences an action against the other Party arising out of or in connection with this CM Agreement, the prevailing Party in such litigation shall be entitled, in addition to any award or judgment, to recover its reasonable attorneys' fees and costs of suit from the other Party.

**ARTICLE XII
MISCELLANEOUS**

Section 12.1 Notices. All notices, demands, and other communications sent by one Party to the other for purposes of asserting any right or obligation pursuant to this CM Agreement, or related to the interpretation of this CM Agreement, shall be duly addressed as indicated below and sent via: (i) personal delivery (signature on delivery receipt requested); (ii) registered or certified U. S. Mail (postage prepaid and return receipt requested); (iii) FedEx, U.P.S. or other reliable private express delivery (signature on delivery receipt requested); or (iv) by facsimile transmission (with transmission confirmation retained in sender's records and original of communication deposited into the U. S. Mail within twenty-four hours after transmission, first-class postage prepaid). Any such communication shall be deemed received only upon actual receipt by the addressee. This Section shall not be construed as applying to day-to-day communications between the Parties for purposes of administering the CM Services or construction of any Project. Any Party may change its below-specified name, address, facsimile number, or person to whom attention should be directed by giving notice as specified in this Section. Notices, demands, and communications within the purview of this Section shall be duly addressed and sent as follows:

To the District:

Perris Union High School District
Attn: Candace Reines
155 East 4th Street, Perris, CA 92570
Phone: (951) 943-6369
Fax No. (951) 657-5638

To the Construction Manager:

Neff Construction, Inc.
Attn: Ron Kuehl
P.O. Box 1488, Ontario, CA 91762
Phone: (909)947-3768
Fax: (909)947-3823

Section 12.2 Amendment. This CM Agreement may be amended or modified only by means of a writing duly approved and executed by the Parties.

Section 12.3 Prevailing Wages. The Construction Manager acknowledges the requirements of Labor Code Section 1770 *et seq.*, which would require the payment of prevailing wages if the CM Services for any Project or any portion thereof is determined to be a "public work" as that term is defined in the Labor Code. The Construction Manager shall defend, indemnify, and hold harmless the District and the District Agents from and against any claim or liability, including, without limitation, attorneys' fees and costs, arising from or related to any failure or alleged failure of Construction Manager to comply with Labor Code Section 1770 *et seq.*

Section 12.4 Equal Opportunity Employment. The Construction Manager represents and warrants that it is an equal opportunity employer and it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

Section 12.5 Counterparts. This CM Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.6 Due Authority. Each individual signing this CM Agreement represents and warrants that he or she has been authorized by appropriate action of the Party that he or she represents to enter into this CM Agreement on behalf of that Party.

[Remainder of Page Left Blank.]

In Witness Whereof, each of the undersigned duly-authorized representatives of the Parties have executed this CM Agreement on behalf of the Party that person represents.

Perris Union High School District (***“Construction Manager”***)

By: _____
Candace Reines
Asst. Supt Business Services

By: _____
Edward C. Mierau
President

Approved as to Form:
Bowie, Arneson, Wiles & Giannone

By: _____
Jeffrey A. Hoskinson
Attorneys for the Perris
Union High School District

EXHIBIT "A"

SCOPE OF CM SERVICES

Construction of the Classroom Addition, Renewable Energy, Parking Lot & Offsite Improvements @ Heritage High School

The Construction Manager shall provide the construction management services specified in this Scope of CM Services consistent with all other provisions of this CM Agreement. The specification of a service in any particular phase of the Project (e.g., pre-construction, construction and post-construction) shall not mean that the service shall not be required during any other phase of the Project (e.g., public relations). For the Project subject to this CM Agreement, the Construction Manager is to provide all necessary and typical construction management services, including, but not limited to:

A. PRE-CONSTRUCTION PHASE SERVICES

(1) Design Coordination. Assist the District in administrating and monitoring the design phase for the Project listed above by providing the following services:

(a) Advise the District on compliance of the design of the Project with the approved budget therefor.

(b) Advise the District on the timely communication of design-review comments for the Project.

(c) Advise the District on implementation of design change-orders for the Project and the impact of such change orders on the total budget therefor.

(d) Attend design review meetings for the Project on a regular basis and as directed by the District.

(e) Prepare and reconcile cost estimates for the Project.

(2) Design and Constructability Review. Review design documents, including, but not limited to, drawings and specifications, during their development and advise on proposed site use and improvements, selection of materials, building systems and equipment, and methods of Project delivery. Review shall be completed during the following phases of design (i) Schematic Design; (ii) Design Development; (iii) Construction Documents; and (iv) Completion of Agency Review. Perform the following design and constructability review services and provide information and recommendations in regard thereto:

(a) Recommend changes in design and construction systems or techniques for the Project in order to reduce construction duration and meet Project budget.

(b) Identify potential construction-phasing problems in the design for the Project and recommend solutions therefor. Develop phasing strategy that will minimize time drawings are in plan-check by overlapping the submittal process (i.e., concurrent submittal to governmental agencies with approval authority) where possible under law and regulation.

(c) 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. Verify that the requirements and assignment of responsibilities are included in the proposed contract documents.

(d) Advise the District in regard to separation of Project construction into various categories of work for purpose of separate contracts. Advise on the method to be used for selecting contractors and awarding individual bids. Identify potential contractors for District approval. Inspect, review, revise and assure proper delivery, assembly of the Project manuals and specifications and manage and coordinate the development of plans and specifications with the Architect. Review drawings and specifications to ensure the work of the separate contractors is coordinated, all requirements for the Project have been assigned to the appropriate contract, the likelihood of jurisdictional disputes has been minimized and proper coordination has been provided for phased construction.

(e) Identify and assist in eliminating ambiguities in the construction-contract documents for the Project that may provide an opportunity for contractors to increase costs to the District.

(f) Improve building quality for the Project by recommending and implementing clear, simple construction systems, techniques and details.

(g) Review the reasonableness of the planned work sequence for the Project, coordination of the documents for the various prime contractors and bid packages, and periods of performance by such contractors.

(h) Check construction schedules and phasing plans for the Project for adequacy of lead times for material and equipment procurement.

(i) Review site restrictions and adequacy of access, work areas, and disposal sites for the Project. Coordinate the moving, relocation, temporary housing and storing of District property prior to the construction phase.

(j) Check the accuracy of coordination between construction drawings and other documents for the Project.

(k) Ensure that changes made during the design process for the Project are incorporated into final plans, specifications and other appropriate documents.

(3) Cost Estimating. Develop an independent construction cost estimate for the Project in accordance with the following:

(a) The estimate shall consist of unit costs applied to the major items and quantities of work. The unit cost shall reflect the complete direct current cost of work; complete cost meaning labor, material, waste allowance, sales tax and subcontractor's mark-up.

(b) Fees and general conditions shall be specified as separate line-item costs.

(c) The estimate shall be prepared on the basis of specification section and summarized by the Construction Specifications Institute ("CSI") category.

(d) The estimate shall specify separate line-item categories and totals for the building construction costs, site costs, and utilities costs.

(e) The estimate shall be priced out at current market conditions and shall incorporate all adjustments, as appropriate, relating to mid-point of construction, contingency, and cost index (e.g., Marshall-Swift).

(4) Construction Management Plan In consultation with the Architect, the Construction Manager shall prepare a Construction Management Plan for the Project that shall establish the scope of the Project and the general basis for sequencing the construction of the Project. Prior to preparing the Construction Management Plan, the Construction Manager shall evaluate the local construction market, the District's schedules and budget goals for the Project, develop various alternative approaches, and make recommendations to the District. The Construction Management Plan shall indicate and recommend strategies for purchasing, construction, the various bid packages for the Project, and a Master Project Schedule, and shall include the basis and rationale for all of the following CM Services to be provided by the Construction Manager throughout the construction process, as applicable:

(a) Project Schedule: Develop detailed design and construction critical-path "Master Project Schedule" for the Project, specifying the components of the work, including phasing of construction, times of commencement and completion required of each contractor, ordering and delivery of long-lead items if any, and the occupancy requirements of the District. The Master Project Schedule shall include key milestones to be accomplished, including completion dates for the Architect's and any other consultant's design activities and completion date for construction as specified in this Agreement.

(b) Permits: Assist District in obtaining all necessary permits for the Project, including without limitation, building, grading, occupancy and any special permits. Accompany governmental officials (e.g., Fire Marshal, Division of State Architect, Health Department, *et cetera*) during inspections, assist in preparing and

submitting proper documentation to approving agencies, assist in final testing and other necessary and reasonable activities in regard to obtaining all necessary permits.

(c) Bid and Contract Document Preparation: Assist in developing bid documents, including by dividing the Project into individual contracts for various categories of work and recommending methods and procedures to be used for selecting contractors and awarding contracts. Assist in coordinating and expediting preparation and issuance of bid packages for multi-prime contractors or general contractors, as applicable, including, without limitation, ensuring compliance with requirements for advertisements. Assist in preparation of construction contracts in coordination with District, Architect and District legal counsel.

(d) Generate Interest in Bidding: Establish lists of qualified potential bidders. Develop bidder interest in the Project and maintain contact with potential bidders on a regular basis throughout the bid period. Conduct a telephone campaign to stimulate and maintain interest in bidding, including by Disabled Veteran Business Enterprises. Ensure that potential bidders within District boundaries are made aware of contracting opportunities. Coordinate and respond to bidder inquiries and assist potential bidders to ensure familiarity with minimum bid requirements.

(e) Pre-Bid Conferences: Conduct the pre-bid conferences as required by contract or law to familiarize bidders with the Project, specific Project requirements, bid documents, management techniques, and special systems, materials or methods. Prepare and distribute meeting minutes.

(f) Discrepancies in Bid Documents: Seek and coordinate resolution of potential discrepancies, ambiguities and other issues identified in bid documents, review proposed addenda, and timely forward addenda or other information to potential bidders.

(g) Bid Analysis: Analyze bids and proposals for responsiveness, compliance and content, determine responsibility of bidders, conduct follow-up calls to bidders, and collect post-bid-opening information to be provided by contractors. Prepare bid summaries and recommendations for award of contracts.

(h) Rebidding: If rebidding is required, assist in revising the scope and/or quality of work to reduce the construction costs for the Project to bring construction costs within Project budget. Assist in rebidding of all or portion of Project.

(i) Procurement: Identify and review sources of supplies and services. Develop a schedule for procurement of long-lead time items, capital equipment, and fixtures for the Project when required. Coordinate and expedite delivery, storage and security of procured items.

(j) Temporary Project Facilities: Establish program for temporary Project facilities and equipment, materials and services for common use of the

contractors. Coordinate and expedite delivery of temporary facilities, services and other items.

(k) Safety Programs: Ensure contracts require each contractor to develop, provide and fully implement safety programs, as required by law, including, but not limited to, CAL-OSHA requirements. Require each contractor to provide written certification that required safety programs are in place and effective prior to initiating work on the Project. Require each contractor to confirm, in writing, as a condition of submitting monthly payment requests, that contractor has continuously administered and enforced its published safety program throughout the preceding month, including any required safety meetings. Monitor each safety program to ensure continuous implementation thereof.

(l) Special Consultants: Provide input to the District, at District's request from time to time, in connection with the District's selection, retention, and coordination of the professional services of special consultants, including, without limitation, inspectors, surveyors, and testing laboratories.

(m) Meetings: Participate in regular meetings with the District, Architect, and District consultants in regard to the Project. Prepare and distribute meeting minutes as requested. Attend public meetings as required by District, including, without limitation, meetings of the Board.

(n) Logistics Plan: Prepare logistics plan that addresses such basic issues such as parking, construction staging, and access. Coordinate logistics plan with phasing of the work in order to address logistics issues as they change over time. Consult with the District's staff so that logistics plan is consistent with the requirements of all campus activities and the Project.

(o) Quality Assurance Program: Assist Architect in developing and managing a Quality Assurance Program to ensure compliance with plans and specifications by contractors.

(p) Cost Controls: Prepare, recommend and implement approved methods to budget and track all expenditures on the Project. Generate monthly budget reports and distribute to District and Architect.

(q) State Agencies: Assist District and Architect as necessary with coordination and processing of information and paperwork with the Office of Public School Construction, Division of State Architect and other applicable public agencies.

(r) Communications to Board: Prepare written communications and/or attend meetings of the Board to provide updates on the progress and status of the Project.

(s) Public Relations: Assist with public relations related to the Project, including, but not limited to, preparation of Project information and attending internal

and public meetings as required, including site meetings. Assist the District with respect to any complaints, questions, safety issues, noise problems, dust problems, *et cetera*.

B. CONSTRUCTION-PHASE SERVICES

Provide construction management supervision, administration, oversight and coordination of the Project and all contracts therefor, including, but not limited to, the following:

(a) Project Schedule: Implement, maintain, and monitor contractor compliance with Project schedules. Revise Project schedule as necessary to avoid or minimize delays. Regularly update to current conditions, reissue and distribute Project schedule.

(b) Pre-Construction and Construction Meetings: Conduct pre-construction orientation conferences to orient the contractors to the various reporting procedures and site rules prior to commencement of construction. Coordinate and conduct regular job-site progress and construction meetings with contractors. Prepare minutes of all meetings except for those meetings for which it is specified that the Architect will prepare the minutes.

(c) Contract Submittals: Obtain certificates of insurance, bonds, certifications and other contract documents from contractors, review for completion and adequacy, and forward to District.

(d) Plan Submittals and Requests for Information ("RFIs"): In conjunction with Architect, establish and implement procedures for submittal of, and coordinate and review, shop drawing submittals, RFIs, samples, product data, change orders, payment requests, material delivery dates, *et cetera*. Develop and maintain submittal log ensuring that all materials submittals are reviewed and approved timely to maintain construction progress. Coordinate the dissemination of any information regarding submittals and consult with Architect and District regarding RFIs in regard to contract documents, and assist in resolution of questions that arise. Develop and maintain RFI log, taking reasonable actions to attempt to ensure that all RFIs are processed appropriately and responded to timely to maintain construction progress.

(e) On-Site Records: Develop and implement a comprehensive document management program, and 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; maintenance and operating manuals and instructions; other related documents and revisions arising from the contracts. Make all such records available to the District, Architect and inspector of record. Upon Final Completion, deliver all such records to the Architect for purpose of completing as-built drawings.

(f) Staging and Mobilization: Coordinate and expedite delivery, set-up and removal of temporary facilities, services and other items. Coordinate and expedite preparation of construction staging areas and preparation of the site for construction, including, but not limited to, installation of fencing, barricades or other necessary facilities. Coordinate mobilization of contractors and construction sequencing.

(g) Stormwater Management: Assist the District in executing its responsibilities to comply with applicable laws, rules and regulations related to stormwater control and management. When required, ensure the preparation and filing of a Notice of Intent with the Regional Water Quality Control Board. Ensure development and enforcement of the erosion and sediment control measures for the Project when required by applicable laws, rules and regulations.

(h) Testing and Inspections: Coordinate all testing and inspections required for the Project with the District, Architect, inspector of record, special inspector or consultant and/or contractor as applicable. Assist in selecting special consultants and/or testing laboratories. Review and comment on all testing and inspection reports.

(i) Labor Compliance: Assist District and its consultant(s) in executing labor compliance responsibilities in accordance with Labor Code Section 1771.5 and other provisions of law.

(j) Contract Administration: Administer the construction contracts as set forth herein and as provided in the general conditions of the contracts, and endeavor to achieve satisfactory performance from each contractor. Provide management and related services as necessary to coordinate work of all contractors, and the activities and responsibilities of the Architect and District, in order to complete the Project in accordance with the contract documents and this CM Agreement. Provide sufficient organization, qualified and experienced personnel and management to adequately carry out the requirements of this CM Agreement.

(k) Correspondence: Prepare and send correspondence to contractors and other parties in regard to Project-related matters.

(l) Public Records: Respond or, as appropriate, assist the District in responding, to requests for public records pursuant to the Public Records Act.

(m) Observation of Construction: Assist the inspector of record in observing the construction and ensuring 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. Report to District and Architect regarding observation of construction. Diligently endeavor to guard against defects and deficiencies in the work and advise District and Architect of any deviations, defects or deficiencies in work. These responsibilities do not make the Construction Manager responsible for duties and responsibilities of the inspector of record.

(n) Review Construction Progress: Maintain a daily log containing record of weather, contractors working on site, number of workers, work accomplished, problems encountered, other relevant data, and additional data as specified by District. Make log available to District on a regular basis and upon reasonable request. Prepare, update and distribute construction schedules on a regular basis to maintain Master Project Schedule. Assign percentage-complete values based on actual observation and evaluation of construction progress by Construction Manager. Report actual construction progress as compared to scheduled milestones and specifically note any variances. Report problems encountered in accomplishing the work and recommend appropriate action to resolve problems with minimum adverse affect on construction or Project schedule. Assist contractors in preparing recovery schedules, which shall detail costs of the corrective actions and specific efforts to recapture lost time. Distribute approved recovery schedules to contractors, District, Architect and other appropriate parties.

(o) Non-Conforming Work: Review contractor recommendations for corrective action in regard to work that does not conform to contract documents or other legal requirements. Make recommendations to the District, the Architect and inspector of record with respect to non-conforming work. Assist inspector of record in ensuring and verifying that authorized corrective action is properly incorporated in the work. Report to District and Architect regarding status of non-conforming work and related corrective measures. These responsibilities do not authorize the Construction Manager to approve, on behalf of the District, any contractor recommendations for corrective measures.

(p) Contract Prerogatives: Advise and make recommendations to the District in regard to exercise of contract prerogatives as necessary to achieve compliance with construction contracts, such as giving notice to accelerate the progress of construction when the schedule goals are in jeopardy, withholding payment for cause, *et cetera*.

(q) Evaluate and Develop Change Orders: Assist Architect in evaluating contractor proposals for change orders and costs thereof, and make recommendations to the District and Architect regarding the acceptance of proposed change orders. Assist District and Architect in preparing proposed change orders and determining effect on costs thereof. Assist District and Architect in negotiating change order costs and time extensions.

(r) Implement and Manage Change Orders: Manage the change order process to include preparing or responding to requests for change orders, preparing independent estimates, negotiating changes, and documenting all changes. Ensure that no instructions are issued to any contractor contrary to District instructions or contrary to any contract between District and the Architect, Construction Manager, contractor or other party. Ensure that no changes to construction contracts shall occur except by change order duly executed by District. Ensure that contractors are aware that, in the absence of a duly-executed change order, no communication between the

District, Construction Manager, contractor or other party shall be binding on the District or release the contractors from any contract obligations.

(s) Change Order Reports: Maintain a log of all change orders. Prepare and distribute change order reports on a regular basis during construction. The change order reports shall include information pertaining to proposed and executed change orders and the effect thereof on contract price and Project schedule as of the date of the report.

(t) Update Construction Costs: Update estimates of construction cost during course of construction to incorporate approved changes in the Project, delays, cost increases and other matters as they occur, and distribute updated estimates to District and Architect.

(u) Project Status Reports: Prepare and distribute on a regular basis reports on status of construction. Ensure contractors complete and provide verified reports required pursuant to Title 24 of the California Code of Regulations.

(v) Daily Reports: Collect, review and maintain all contractors' daily reports.

(w) Schedule of Values and Requests for Payment: Review and approve each contractor schedule of values for each activity included in the contractor's schedule of events. Develop and maintain a master schedule of values. Review payment requests and related issues, and make recommendations to District and Architect regarding payments to contractors based on completed work and contract requirements. Obtain Architect certification of invoices. Obtain, review, approve and forward to District all required unconditional and conditional waivers and releases.

(x) Punch Lists: Develop punch lists in conjunction with Architect and inspector of record. Issue punch lists to contractors, and schedule and monitor corrections of punch list items. Upon completion of all corrective action, perform a final comprehensive review of the Project in conjunction with the Architect and the inspector of record, prepare and submit a report to District indicating whether the Construction Manager and the Architect find the work performed acceptable and in accordance with contract documents and the relevant Project data, and make recommendations as to final payment and recording of a Notice of Completion.

(y) Start-Up and Testing: Ensure proper installation of utilities, operational systems and equipment, and, in conjunction with Architect and District, verify readiness for operations. Assist with initial start-up and testing of utilities, systems and equipment. Coordinate and assist with District move-in.

(z) Contractor Claims and Disputes: Obtain copies of all notices of claims and claims by contractors, and maintain records and otherwise assist the District with respect to processing, negotiations, mediation, arbitration or other resolution of claims and disputes. Timely provide detailed information relating to claim as may be

requested or deemed relevant in the opinion of Construction Manager. In conjunction with Architect, timely evaluate each claim in accordance with contract requirements and applicable law, and report to District in regard to validity of claim. Timely analyze and report in written narrative form to District regarding cost and time impacts of claim and each possible reasonable alternative resolution of claim, including, without limitation, impact on Master Project Schedule and recommended course of action. Negotiate or assist in negotiating claims, and make recommendations in regard to settlement or other appropriate action.

C. POST-CONSTRUCTION PHASE SERVICES

Provide all necessary, normal and usual post-construction services, including, but not limited to, the following:

(a) Guarantees: Collect all warranties and guarantees from contractors and suppliers. Coordinate, schedule and monitor warranty and guarantee work following Final Completion as required pursuant to this CM Agreement.

(b) Other Documentation and Items: Collect and review for completeness all operations and maintenance manuals from contractors and equipment suppliers, and provide to District in three-hole binders. Collect and review all other written materials, including, without limitation, affidavits and releases, keys, special tools, and other items relating to the Project and provide to the District.

(c) Training: Coordinate and schedule training for District's staff in regard to operation and maintenance of all building and other systems.

(d) As-Builts: Coordinate, supervise and expedite preparation and provision by contractors of "as-built" documents and make recommendations for adequate withholding of retention in the event contractor fails to provide acceptable "as-built" documents.

(e) Final Reports: Prepare final accounting and close-out reports of all matters included in regular or special reports prepared and submitted during the pre-construction and construction phases, including, without limitation, summaries, for historical purposes, of any items not self-explanatory.

(f) Close-Out and Audits: Assist District and Architect with all Project close-outs, including, without limitation, obtaining Division of State Architect certification, and with any audits of the Project occurring during the term of this CM Agreement and for a period of one year thereafter..

EXHIBIT "B"

Construction Management Fee Schedule

Based on current estimated Construction Cost of \$5,000,000

<u>Construction Management Fee</u>		
	4.5% of Construction Cost	\$225,000.00
<u>General Conditions</u>		
	4.5% of Construction Cost	\$225,000.00
<u>Reimbursable Expenses (including Temp Power)</u>		
	Plan Printing Costs	\$30,000.00
	Est TOTAL COST	\$480,000.00

EXHIBIT "C"

SCHEDULE OF HOURLY RATES

Personnel Classification	Hourly Rate (includes overhead, burden & profit)
Principal In Charge	\$ 120.00
Project Director	\$ 100.00
Construction Manager	\$ 90.00
Assistant Construction Manager	\$ 80.00
Constructability Review	\$ 80.00
Value Engineering	\$ 80.00
Estimator	\$ 80.00
Scheduler	\$ 80.00
Internet Technology	\$ 60.00
Document Controller	\$ 60.00

EXHIBIT "D"

PARTY REPRESENTATIVES

District Representative: Ms. Candace Reines
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