

*AGREEMENT FOR CONSTRUCTION MANAGEMENT  
SERVICES*

*FOR*

*PALOMA VALLEY HIGH SCHOOL POOL FACILITY*

By and Between

PERRIS UNION HIGH SCHOOL DISTRICT

And

PAUL C. MILLER CONSTRUCTION CO., INC., DBA MILLER CONSTRUCTION

Dated as of April 15, 2020

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**AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES  
HERITAGE HIGH SCHOOL POOL**

This Agreement for Construction Management Services (“Agreement”) for the Paloma Valley High School pool facility is made effective as of April 15, 2020 (“Effective Date”) by and between: (i) the Perris Union High School District (“District”), a California public school district; and (ii) Paul C. Miller Construction Co., Inc., dba Miller Construction (“Construction Manager”), a California corporation. The District and the Construction Manager may be referred to hereinafter individually as a “Party” and collectively as the “Parties.”

**RECITALS**

A. The District has undertaken efforts to plan and construct certain improvements, including a pool, team rooms and a campus maintenance addition, as described in more detail in Exhibit “A” hereto (“Project”). As of the Effective Date, the District has contracted with PJHM Architects (“Architect”) to provide architectural services for the Project, including, among others, to act as the architect of record for the Project.

B. The District intends that the Project shall be completed through award by the District of multiple prime contracts to the trade contractors needed to complete the Project (each a “Trade Contract”), and that such Trade Contracts and the construction work required to complete the Project will be managed, as provided herein, by a professional construction management consultant (the “CM Services”).

C. The District previously issued a request for qualifications and proposals from qualified and experienced general contractors and, through that competitive process, awarded contracts to a pool of qualified and experienced contractors. The District then selected the Construction Manager from that pool as best suited to assist the District in completing the Project. The Construction Manager represents and warrants that it possesses the necessary personnel, professional qualifications, expertise, financial capability and licenses to perform the CM Services required pursuant to this Agreement and, based thereon, the District hereby agrees to retain the Construction Manager to perform CM Services for the Project.

D. The purpose of this Agreement is to set forth the terms and conditions upon which the District shall employ the Construction Manager to provide the CM Services for the Project.

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

**AGREEMENT**

**PART 1: PROVISION OF CM SERVICES**

**Section 1.1 Scope of CM Services.** The scope of the CM Services that the Construction Manager shall provide pursuant to this Agreement, for the Project or for one or more of the Project Components (defined in Section 5.1) as the District may direct, includes any and all services described in this Agreement, including, without limitation, those described in Exhibit “B” attached hereto. The Construction Manager shall provide the CM Services in accordance with all terms and conditions set forth in this Agreement and, in exchange for 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.

**Section 1.2 Additional CM Services.** At any time during the term of this Agreement, the District may request that the Construction Manager provide additional CM Services related to the Project that are not otherwise required by this Agreement and that the Parties, at the time they executed this Agreement, reasonably did not anticipate would be necessary for the then-intended scope of the Project (“Additional CM Services”). Additional CM Services shall not be deemed or construed to include any usual or customary construction management services required for the Project as originally contemplated by the Parties. The Parties shall amend this Agreement to provide for performance by the Construction Manager of desired Additional CM Services, and the District shall not be responsible for payment for any Additional CM Services performed in the absence of an applicable amendment to this Agreement. The Construction Manager shall provide all Additional CM Services in accordance with the applicable provisions of this Agreement. The District shall compensate the Construction Manager for authorized Additional CM Services as provided in Section 7.5 herein.

**Section 1.3 Commencement of CM Services.** The Construction Manager must commence providing the CM Services required pursuant to this Agreement upon receipt from the District of a written notice to proceed (“NTP”). The District may issue a single NTP for the Project as a whole or multiple NTPs for any one or more Project Components.

**Section 1.4 Project Timing and Budgets.** The Construction Manager must provide the CM Services such that, except to the extent of events reasonably outside the Construction Manager’s control, the Project will be completed: (i) not later than the applicable milestone (if any) and final completion dates; and (ii) for total costs as are within the applicable Project Construction Budget (defined in Section 4.1 herein) and applicable Project Total Budget (defined in Section 4.2 herein).

**Section 1.5 Standard of Care.** The Construction Manager must perform the CM Services in conformance with and consistent with the standards expected to be employed by professional construction managers that are qualified and experienced in constructing public kindergarten through twelfth grade school facilities in the State of California (“State”).

**Section 1.6 District Consultants, Staff and Contractors.** The District reserves the rights to employ other consultants in connection with the Project and/or to perform work on the Project using its own staff or other contractors. The Construction Manager shall notify the District in the event any such action by the District unreasonably interferes, or likely will unreasonably interfere, with the Construction Manager’s responsibilities pursuant to this Agreement. Upon receipt of any such notification, the District shall have the option to: (i) immediately cause the consultant or other party or parties 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 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 such other party or parties 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 as provided in Part 12 herein. In the event the Construction Manager pursues dispute resolution, the Construction Manager shall continue to provide the CM Services in strict accordance with this Agreement during the pending dispute resolution process.

**Section 1.7 Reasonable Cooperation Required.** The Construction Manager must at all times reasonably cooperate with the District and its staff, the Architect, and the District’s other consultants and contractors, in connection with their respective activities related to the Project.

**Section 1.8 Administration of Construction Manager's Business.** The CM Services shall be deemed and construed to include any and all of the Construction Manager's internal business administration and management necessary for the Construction Manager to perform its work on the Project, regardless of whether such administration and management is described in this Agreement. The Construction Manager shall perform such business administration and management in an expeditious and economical manner consistent with the interests of the District.

**Section 1.9 Administration of Warranties and Guaranties.** For a period of one year after Final Completion (defined below in this Section) of the Project or, if Final Completion does not occur, for a period of one year after all work on the Project ceases, the Construction Manager, upon request of the District and at no cost to the District, must enforce any and all warranties and guarantees applicable to the Project, and must initiate, coordinate and manage any work to be performed pursuant to such warranties and guarantees. In undertaking any such actions, the Construction Manager does not assume any duty or responsibility to itself perform any warranty or guarantee work. For purposes of this Agreement, "Final Completion" shall be deemed to mean completion of the Project as evidenced by either: (i) the recording of one or more notices of completion representing the entirety of the Project; or (ii) acceptance of the Project by the Board of Trustees of the District ("District Board"). The District will not record a notice of completion for the Project ("Notice of Completion"), or request acceptance of the Project by the District Board, unless and until after all work on the Project has been completed, including, without limitation, all "punch list" items.

**Section 1.10 District Review of CM Services.** The Construction Manager must allow any or all of the Authorized District Representatives (defined in Section 6.4), at any reasonable time and with reasonable notice, to inspect or review the CM Services and all records related thereto maintained by the Construction Manager in order to determine whether the CM Services are being performed in accordance with the terms of this Agreement.

**Section 1.11 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 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.

## **PART 2: CONSTRUCTION MANAGER STATUS**

**Section 2.1 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 Agreement shall extend only so far as is reasonably necessary for the Construction Manager to perform its duties and responsibilities pursuant to this Agreement. The personnel performing any of the CM Services pursuant to this 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 to 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. District and Construction Manager acknowledge Labor Code section 2750.3 and its potential impact on independent contractor relationships. District and Construction Manager agree that Construction Manager, and any personnel performing any of the CM Services under this

Agreement on behalf of the Construction Manager, (a) will remain free from the control and direction of the District in connection with the performance of the CM Services; (b) the scope of work contemplated by this Agreement is outside the usual course of the District's business; and (c) is customarily engaged in an independently established trade, occupation, or business of the same nature as the CM Services performed under this Agreement. Notwithstanding the provisions of Section 2750.3, Construction Manager and the personnel described above desire to maintain independent contractor status in relation to the CM Services provided for the District hereunder. Construction Manager agrees to indemnify the District from any claims of misclassification or otherwise related to Section 2750.3.

**Section 2.2 Licenses.** At all times while it has any responsibilities pursuant to this Agreement, the Construction Manager must maintain, in full force and effect, any and all licenses, permits, qualifications, and approvals of whatever nature as are legally required for it to perform the CM Services.

**Section 2.3 Manner of Performing CM Services.** Except as provided in this Agreement, the Construction Manager shall have the sole discretion to determine the manner in which it will perform the CM Services. The Construction Manager must comply with all federal, State and local laws, rules, regulations, and other governmental requirements applicable to the performance of the CM Services. The Construction Manager also must 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. If the District determines that pupils may be present during the course of work on the Project, the Construction Manager must comply with all District requirements for criminal-history background checks, regardless of whether statutory requirements for such background checks otherwise would apply.

**Section 2.4 Assignment or Subcontracting.** Except as provided in this Agreement, the Construction Manager must perform the CM Services required pursuant to this Agreement using staff and other resources available within its own organization, and no portion of the CM Services shall be performed by any subcontractor to the Construction Manager. 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 Agreement without the prior written consent of the District, which consent the District may withhold, delay, or condition in its sole discretion. Notwithstanding the foregoing, the District shall not unreasonably withhold, delay or condition its consent with respect to the subcontracting of any CM Services that require architect, structural engineer, or environmental consultant services that cannot be provided by a member of the Construction Manager's staff.

**Section 2.5 Prevailing Wages.** The Construction Manager acknowledges the requirements of Labor Code Section 1770 *et seq.*, which require the payment of prevailing wages if the CM Services for the 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, as provided in Section 9.1 herein, from and against any and all claims and/or liabilities, including, without limitation, attorneys' fees and costs, arising from or related to any failure or alleged failure of the Construction Manager to comply with Labor Code Section 1770 *et seq.*

**Section 2.6 Equal Opportunity Employer.** The Construction Manager represents and warrants that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment in violation of applicable federal, State or local laws, including, without limitation, on the basis of any such person's race, religion, color, national origin, ancestry, sex, or age.

The foregoing prohibition shall apply to, but not be limited to, recruitment or the initial employment, promotion, demotion, transfer, layoff or termination of any person.



### **PART 3: CHANGE, SUSPENSION OR TERMINATION OF PROJECT**

**Section 3.1 Change in Scope of Project.** The District, in its sole discretion, may change the scope of the Project or any Project Component, including, without limitation, any increase or reduction in scope of the Project, and such change shall take effect immediately upon written notice from the District to the Construction Manager. Upon receipt of any such notice, the Construction Manager must promptly make adjustments in its staff and resources, and in the General Conditions (defined in Subsection (b) of Section 7.2 herein) and other things relating to the Project, to accommodate the change in the Project. In the event the District changes the scope of the Project, the Parties shall amend this Agreement to provide for an equitable adjustment to the Basic CM Fee (defined in Section 7.1 herein) payable to the Construction Manager. If the Parties are unable to agree as to the terms of any such amendment, the matter shall be subject to dispute resolution as provided in Part 12 of this Agreement.

**Section 3.2 Suspension or Termination of Project.** The District, in its sole discretion, may suspend all or any portion of the work on the Project, or may terminate the Project in whole or in part, and such suspension or termination shall take effect immediately upon written notice from the District to the Construction Manager. Upon receipt of any such notice, the Construction Manager must promptly make adjustments in its staff and resources, and in the General Conditions and other things relating to the Project, to accommodate the suspension or termination of the Project. Each such suspension or termination shall be subject to the applicable provisions of Part 8 herein. For purposes of this Agreement: (i) the District shall be deemed to have terminated 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 terminated the Project only in part if the District has ordered a permanent cessation of all work on some, but not all, 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.

### **PART 4: PROJECT COSTS AND BUDGETS**

**Section 4.1 Project Construction Budget.** If Exhibit A hereto does not specify a final budget for the costs attributable to construction of the Project ("Project Construction Budget"), or if the Project Construction Budget specified in Exhibit A is qualified as being only the initial or estimated Project Construction Budget, the Construction Manager shall assist the District in developing a final Project Construction Budget. For purposes of this Agreement, the Project Construction Budget is deemed to be the total amount that may be expended for any and all costs of constructing and equipping of the Project, including, without limitation: (i) costs of site preparation; (ii) removal or demolition of existing structures; (iii) storm-water compliance and erosion control; (iv) construction of improvements; (v) all other work, supplies, materials, services, or other things of any nature whatsoever incidental or necessary work in connection with construction of the Project; (vi) fees and other costs attributable to construction management, job supervision, and similar services necessary for the Project; (vii) costs and expenses for application and processing fees, taxes, and insurance premiums paid by the District for the Project; and (viii) administrative and other expenses necessary or incident to the Project. The Project Construction Budget excludes: (i) compensation paid to the Architect, the Architect's consultants, or other District consultants employed for purposes of the Project; (ii) costs of land or rights-of-way; (iii) testing and inspection fees not included within the scope of any of the Trade Contracts for the Project; (iv) asbestos consulting, testing, and abatement costs (this item may be included in the Project Construction Budget upon approval by the District); (v) permanent utility services; (vi) non-construction-related contingency and/or allowance amounts associated with the Project; (vii) furniture; and (viii) property and similar taxes attributable to the site of the Project ("Project Site"). The District, in its sole discretion, may at any time agree to revise the estimated or final Project Construction Budget; provided that each such revision shall be subject to approval by the District Board.

**Section 4.2 Project Total Budget.** If Exhibit A hereto does not specify a final budget for all costs attributable to the Project (each a “Project Total Budget”), or if the Project Total Budget specified in Exhibit A is qualified as being only the initial or estimated Project Total Budget, the Construction Manager shall assist the District in developing a final Project Total Budget for the Project. The Project Total Budget shall include the Project Construction Budget, together with: (i) compensation paid to the Architect, the Architect’s consultants or other District consultants employed for purposes of the Project; (ii) costs of land or rights-of-way; (iii) testing and inspection fees not included within the scope of any of the Trade Contracts for the Project; (iv) asbestos consulting, testing, and abatement costs; (v) off-site utility facilities; (vi) non-construction-related contingency amounts associated with the Project; (vii) furniture; and (viii) any and all other direct and indirect non-construction costs associated with the Project. The District, in its sole discretion, may at any time agree to revise the estimated or final Project Total Budget for the Project; provided that each such revision shall be subject to approval by the District Board.

**Section 4.3 Responsibility for Keeping Costs Within Budgets.** The Construction Manager shall be primarily responsible for facilitating Final Completion of the Project in a manner that results in: (i) the actual cost of constructing the Project as measured at the time of Final Completion (“Actual Construction Cost”) being not in excess of the Project Construction Budget; and (ii) the total cost of the Project being not in excess of the Project Total Budget. Not as a limitation on the foregoing, the Construction Manager shall make reasonable efforts to coordinate and manage the Project in such manner as will assist in ensuring that the Actual Construction Cost does not exceed the Project Construction Budget. However, the Construction Manager does not have control over the costs of labor, materials or equipment included in any competitive bids and, therefore, does not hereby guarantee the amounts of any contracts based on such bids. The Construction Manager also shall not be liable for any increase in the Actual Construction Cost attributable to circumstances reasonably not within the Construction Manager’s control, but the Construction Manager shall be responsible for compliance with the requirements of Section 4.5 herein.

**Section 4.4 Construction Cost Estimating.** The Construction Manager, on an ongoing basis during development of the plans, specifications and other documents that describe the work to be included within the Project (“Project Plans”), must review the Project Plans (and any other conceptual documents discussed by the District, Architect, and Construction Manager) sufficient for cost-estimation purposes. As reasonably requested by the District or as otherwise appropriate or necessary for the Construction Manager to satisfy its obligations pursuant to Section 4.3 herein, the Construction Manager shall estimate the cost to construct the Project (“Estimated Construction Cost”). The Construction Manager also shall determine the Estimated Construction Cost for the Project immediately prior to bidding of the Project.

**Section 4.5 Identifying and Resolving Budget Issues.** Based on its determinations of the Estimated Construction Costs, the Construction Manager shall promptly inform the District and the Architect if the Estimated Construction Cost exceeds the Project Construction Budget. The Construction Manager shall thereafter coordinate and conduct working sessions with the District, Architect and Construction Manager to identify measures, including possible alternative bids or revisions to the Project Plans, that may be implemented to ensure that the Estimated Construction Cost and Actual Construction Cost do not exceed the Project Construction Budget. The Construction Manager, in conjunction with the District, shall coordinate with the Architect to accomplish such revisions to the Project Plans and/or other 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. The Construction Manager also shall identify and describe to the District any items that might result in the total cost of the Project being in excess of the Project Total 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 the Project does not exceed the Project Total Budget. The District shall reasonably cooperate with value engineering or other efforts by the Construction

Manager to fulfill its responsibilities pursuant to Section 4.3 herein, provided that such efforts will not result in any decrease in scope or other undesirable impacts on the Project.

**Section 4.6 Competitive Bidding.** To the extent required by law, all Trade Contracts shall be let after competitive bidding. In the event the total amount of the lowest responsive and responsible bids received by the District for construction of the Project, plus the total amount of any District-approved allowance(s) for deferred bidding of any Project Component(s) and other anticipated construction costs, exceeds the Project Construction Budget, the District may: (i) within a reasonable time, authorize rebidding of the Project or any Project Components; (ii) require revisions to the scope of the Project or any Project Component, or to the scope of any Trade Contract; or (iii) authorize an increase in the Project Construction Budget. In the event the District determines to reduce the scope of the Project, any Project Component or any Trade Contract for cost-reduction purposes, the Construction Manager shall, without additional compensation, cooperate with the District and the Architect as necessary to facilitate such actions and thereby reduce the Actual Construction Cost to within the Project Construction Budget.

## **PART 5: ADMINISTRATIVE FUNCTIONS**

**Section 5.1 Project Components.** The Construction Manager, subject to District review and approval, shall determine the logical division of the Project by construction trades and/or other components (each a "Project Component") 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 5.2 Payment to Trade Contractors.** Subject to District review and approval and consistent with any procedures and requirements of the Trade Contracts, the Construction Manager shall develop and implement a procedure for the review, processing and payment of invoices for progress and final payments to the prime contractors on the Trade Contracts (each a "Trade Contractor"), and resolution of disputes related thereto.

**Section 5.3 Construction Manager Representatives.** The representatives of the Construction Manager specified in Exhibit "C" hereto shall be the Construction Manager's authorized representatives for all purposes of this Agreement and the CM Services (each an "Authorized CM Representative"). The Construction Manager must ensure that each Authorized CM Representative has all necessary authority to act on behalf of the Construction Manager for all purposes of this Agreement and to coordinate all phases of the CM Services. The Authorized CM Representatives must work closely and cooperate fully with the Authorized District Representatives (defined in Section 6.4) and all local, State, and federal government agencies or departments that have jurisdiction over the CM Services and/or the Project. The Authorized CM Representatives shall at all reasonable times be available to the Authorized District Representatives and the District's consultants for purposes related to the Project, including, without limitation, bidding issues, construction, and any disputes related thereto.

**Section 5.4 Substitution of Key Personnel.** The Construction Manager acknowledges and represents that the designated Authorized CM Representatives are "key" personnel who will perform specific tasks, duties, and services pursuant to this 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 Authorized CM Representative or other Construction Manager personnel in the event the District determines that such person has performed in an unsatisfactory manner.

**Section 5.5 Progress Reports.** The Construction Manager shall regularly report to the District regarding: (i) the progress made toward Final Completion; (ii) status of the cost, quality, scope, scheduling of the construction; and (iii) any other issues that arise in relation to the Project (each a “Progress Report”). Each Progress Report must be in writing, must be signed by an Authorized CM Representative, and must be updated and provided to the District and the Architect not less than every two weeks. Each Progress Report must describe any problems or incidents that arose, or might arise, 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 must include a summary of the Actual Construction Cost to date relative to the projected Project Construction Budget. Each Progress Report must cover the period of time since the prior Progress Report and must specify the status of any issues detailed in any prior Progress Report but not yet resolved. The obligation to provide the Progress Reports is separate from and in addition to the Construction Manager’s obligation to immediately notify the District of any anticipated or actual delay in construction of the Project, lack of conformity of any work with the applicable Project Plans, or actual or anticipated cost of construction in excess of the Project Construction Budget.

**Section 5.6 Construction Progress Meetings.** The Construction Manager shall conduct meetings with the Trade Contractors, the Authorized District Representative and other parties as directed by the District or as necessary in connection with the construction of the Project (each a “Construction Meeting”). Unless the District agrees otherwise, the Construction Manager shall hold the Construction Meetings on a weekly basis and on such other occasions as reasonably requested by the District. The Construction Manager shall establish a regularly-scheduled date and time, acceptable to the District, for holding the Construction Meetings. 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 5.7 Construction Committee Meetings.** The Construction Manager shall participate in meetings with the Authorized District Representatives, the Architect, other District consultants, and other parties as directed by the District, at which any and all matters relating to the Project may be discussed (“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 the status of the Project, issues or incidents related to the Project, and possible alterations or modifications to the Project or the Project Construction Budget. The Parties intend that the Architect shall record and distribute minutes of the Construction Committee Meetings to all attendees and such other parties as determined by the District.

**Section 5.8 Appearance at Hearings.** Upon request of the District, the Construction Manager must, without additional compensation, attend and participate in public hearings or other meetings related to the Project or necessary to the performance of the CM Services. However, if the District requests that the Construction Manager attend and participate in any such hearing or meeting relating to the Project, and the hearing or meeting will occur more than ninety days after Final Completion of the Project, the attendance and participation by the Construction Manager shall be considered to be Additional CM Services and shall be subject to Sections 1.2 and 7.5 herein.

**Section 5.9 CM Records.** The Construction Manager shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including, without limitation, the costs of administering this Agreement (“CM Records”). The Construction Manager must keep such complete and accurate CM Records as are necessary for proper financial management related to this Agreement. All such CM Records must, 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 Agreement and until the later of four years from the date of final payment pursuant to this 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 5.10 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 must, as applicable, be maintained in accordance with generally accepted accounting principles. The Construction Manager shall make the Project Records 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 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.

## **PART 6: DISTRICT RESPONSIBILITIES**

**Section 6.1 Copies of Project Plans.** Upon reasonable request of the Construction Manager, the District, at its cost, will furnish to the Construction Manager a reasonable quantity of the Project Plans, not in excess of three full sets.

**Section 6.2 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 and as reasonably is within the District’s knowledge, possession, or control. 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 that are required during the course of construction by any applicable law, by any applicable permit or approval, or by the Project 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 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 6.3 Accuracy of Information.** The Construction Manager, to the extent reasonable, shall be entitled to rely on the accuracy and completeness of the information, testing, and services provided by the District pursuant to Section 6.2. However, the Construction Manager shall not be entitled to rely upon any such information, testing or services, or on any of the Project 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 6.2 is, or any of the Project 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 any of the Project Plans, the District shall promptly inform the Construction Manager and the Architect.

**Section 6.4 Authorized District Representatives.** The District representatives specified in Exhibit C hereto are the District's representatives for all purposes of this Agreement (each an "Authorized District Representative"). Subject to the District Board having sole authority to authorize changes to this Agreement, and except as described in Exhibit C hereto or otherwise in writing to the Construction Manager, the District shall ensure that the Authorized District Representative has full authority to act on behalf of the District for all purposes of this Agreement. The Authorized 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 Authorized District Representative shall coordinate and/or 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.

#### **PART 7: CONSTRUCTION MANAGER FEES AND COSTS**

**Section 7.1 Compensation for CM Services.** In exchange for the Construction Manager satisfactorily providing the CM Services in accordance with this Agreement, the District shall: (i) pay to the Construction Manager, as provided in this Part, a basic fee as provided in, or as determined pursuant to, Exhibit "D" attached hereto ("Basic CM Fee"); (ii) reimburse the Construction Manager for costs of the General Conditions that the Construction Manager reasonably and necessarily incurs in connection with the Project; and (iii) reimburse the Construction Manager for any Reimbursable Costs (defined in Section 7.4 herein) that the Construction Manager incurs in connection with the Project as authorized in advance by the District. Notwithstanding anything in this 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, an "increase or expansion in scope of the Project" shall mean a change in the Project that requires additional physical improvements that: (i) the Parties did not originally contemplate would be part of the Project; or (ii) are not expressly or implicitly described in, or required pursuant to, the Project Plans or other conceptual documents prepared for the Project. However, an "increase or expansion in scope of the Project" does not include any changes to the Project as are required to conform the intended improvements with any code, regulation, law or other governmental requirement, including, without limitation, any changes required by an inspector representing any local governmental entity.

#### **Section 7.2 Payment of Basic CM Fee and Reimbursement of General Conditions Costs.**

(a) The portion of the Basic CM Fee attributable to the value of Trade Contracts ("Basic CM Fee (Trades)"), as described in Exhibit D hereto, shall be apportioned and paid to the Construction Manager over the period beginning on the date set forth in the NTP given pursuant to Section 1.3 herein, and ending on the date that is thirty days after the date established for Final Completion of the Project ("Payment Period"). The foregoing presumes that the Construction Manager will complete all post-construction close-out

activities required pursuant to this Agreement within thirty days after Final Completion. In the event such close-out activities are not completed within such time period, the final payment to the Construction Manager pursuant to this Agreement shall not be due and payable until the Construction Manager has satisfactorily completed such activities. After the Construction Manager's delivery of successfully awarded bids for the Trade Contracts, the Construction Manager may submit an application for payment totaling twenty percent (20%) of its Basic CM Fee (Trades), as the "Pre-construction Payment." The maximum portion of the Basic CM Fee (Trades) that the Construction Manager may invoice to the District in any particular month shall be determined by dividing the remaining total Basic CM Fee (Trades) – after the Pre-construction Payment is made and subtracted from the total Basic CM Fee (Trades) – 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 (Trades) paid to the Construction Manager each month. In the event, prior to completion of the Project, the Basic CM Fee (Trades) is increased or decreased in accordance with this Agreement, the maximum amount of the Basic CM Fee (Trades) payable in any particular month thereafter shall be calculated by dividing the modified Basic CM Fee (Trades), less all amounts paid to date, by the remaining portion of the Payment Period. 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 (Trades) payable in any particular month thereafter shall be calculated by dividing the Basic CM Fee (Trades), less all amounts paid to date, by an increased Payment Period as reasonably determined by the District.

(b) For purposes of this Agreement, "General Conditions" shall mean those generic support items and activities as are specified in Exhibit D hereto that reasonably and necessarily must be in place to support and facilitate construction of the Project. The portion of the Basic CM Fee attributable to costs of General Conditions ("Basic CM Fee (GCs)") shall be paid to the Construction Manager based on monthly invoices, submitted to the District in accordance with Section 7.6 herein, with each such invoice detailing the costs of General Conditions ("General Conditions Costs") incurred by the Construction Manager in the prior month. The Construction Manager must itemize the General Conditions Costs at their actual costs, without any markup. The Construction Manager must seek the written consent of the District prior to employing any General Conditions that are not listed, or that are not substantially similar to the General Conditions listed, in Exhibit D hereto, but that are reasonably and necessarily required for completion of the Project, and the District shall not unreasonably withhold, delay, or condition such consent. Subject to Section 7.10 herein, the District shall pay to the Construction Manager the actual costs of the General Conditions as itemized in the applicable invoice, plus a portion of the Basic CM Fee (GCs) as determined pursuant to Exhibit D hereto.

**Section 7.3 Overhead and Profit.** The Basic CM Fee, as it may be adjusted pursuant to this Agreement, shall be deemed and construed to include and constitute full and final compensation to the Construction Manager for any and all overhead and profit attributable to the Project, and the Parties agree that no further compensation shall be paid to the Construction Manager for overhead and profit attributable to the Project unless approved by the District in writing.

**Section 7.4 Reimbursable Costs.** For purposes of this 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 7.6, all Reimbursable Costs presented for reimbursement by the District must be accompanied by documentation that reasonably evidences such costs.

**Section 7.5 Compensation for Additional CM Services.** In exchange for the Construction Manager satisfactorily providing Additional CM Services 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 as agreed by the Parties in the applicable amendment to this Agreement, which may include payment based on the hourly rates set forth in Exhibit D hereto. The Construction Manager must submit invoices for Additional CM Services as provided in Section 7.6 herein.

**Section 7.6 Invoicing and Payment.**

(a) The Construction Manager must submit invoices to the District in accordance with this Section. An invoice may combine the Construction Manager's requests for payment of one or more of the Basic CM Fee, General Conditions Costs, 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 that reasonably evidences the Construction Manager's request for compensation as set forth in the invoice. Except as provided in this 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 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 the Construction Manager shall be extended by the number of days taken by the Construction Manager to provide reasonably adequate supporting information or documentation.

**Section 7.7 Retention.** The District shall withhold from each payment to the Construction Manager an amount equal to five percent 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 District Board, in its sole discretion, may determine that the District will not withhold additional Retention if satisfactory progress has been made and the construction of the Project is more than fifty percent complete. In the event the Construction Manager does not satisfactorily perform the CM Services, or in the event of any dispute related to the Construction Manager's performance of the CM Services, 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 any other remedies available to the District.

**Section 7.8 Final Payment.** Upon completion of all CM Services required pursuant to this Agreement (other than as provided in Section 1.9 herein, Section 5.8 herein, and Paragraph III(a)(7) of Exhibit B hereto), the Construction Manager, in accordance with Section 7.6 herein, may submit a final invoice to the District for the balance of the Basic CM Fee, including any Retention withheld by the District. Subject to the provisions of Section 7.6 herein other than for timing of payment, the District shall pay the undisputed portion of the Basic CM Fee to the Construction Manager within sixty days of the receipt of the final invoice.



**Section 7.9 Interest on Late Payments.** All undisputed amounts hereby payable by the District to the Construction Manager that remain unpaid after the applicable period allowed pursuant to this Agreement, at the option of the Construction Manager, shall be subject to accrual of interest at the rate of five percent per annum. The foregoing shall be construed to mean that interest shall not accrue during the period of any dispute in regard to any amount payable is pending 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 7.6 herein.

**Section 7.10 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 Agreement.

(b) The District shall endeavor to provide a Notice of Payment Dispute to the Construction Manager within fourteen days after whichever of the following is applicable: (i) receipt of the invoice that includes the disputed amount(s); (ii) 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 7.6; or (iii) failure of the Construction Manager to timely provide information or documentation relating to the disputed amount(s) requested by the District pursuant to Subsection (b) of Section 7.6.

(c) Not later than ten days after receipt of any Notice of Payment Dispute, the Construction Manager may 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 the 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 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 7.6 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 Agreement.

**Section 7.11 No Waiver of District Rights.** The District's payment for any CM Services performed pursuant to this Agreement shall not be construed to operate as a waiver of any rights the District may have pursuant to this Agreement or as a waiver of any cause of action arising out of the Construction Manager's performance of this Agreement.

**PART 8: TERMINATION AND SUSPENSION**

**Section 8.1 Termination by the District.**

(a) At any time and for any reason, the District may terminate this Agreement, in whole or in part, or may terminate any or all CM Services being or to be provided by the Construction Manager, 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 or as of such other date as may be specified in the District Termination Notice. In the event this Agreement is terminated in part only, the Construction Manager shall continue to provide the CM Services required pursuant to the part of this Agreement not terminated, and the Basic CM Fee shall, if applicable, 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 have been completed or are in progress.

(c) In the event the District terminates this Agreement, in whole or in part, as a result of any material breach by the Construction Manager of its obligations pursuant to this 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, without limitation, attorneys’ fees.

**Section 8.2 Termination by the Construction Manager.**

(a) The Construction Manager may terminate this 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 pursuant to this 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, and regardless of whether the Construction Manager has been compensated as required pursuant to this Agreement, 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 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 Agreement; (ii) the District has breached any other significant, material obligation owed to Construction Manager pursuant to this Agreement and failed to cure such breach in accordance with this Agreement; (iii) as a result of circumstances not within the control of the District and the Construction Manager, all work on the Project ceased and did 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 Agreement and/or whether sufficient cause for termination exists shall be resolved as provided in this 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 Agreement shall continue in full force and effect and the Construction Manager shall continue to provide the CM Services as required pursuant to this Agreement. At any time after the receipt of the CM Termination Notice, the District may earlier terminate this 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 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 8.3 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 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 Agreement.

**Section 8.4 Compensation After Termination.** Upon termination of this Agreement, in whole or in part, or of any of the CM Services, the District shall compensate the Construction Manager, as provided in Part 7, 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 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 7.6, the Construction Manager shall provide documentation that reasonably evidences the costs that the Construction Manager believes are payable by the 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 Part 7 for those CM Services not terminated.

**Section 8.5 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 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 that had been suspended, the District shall also resume paying the Basic CM Fee to the Construction Manager in accordance with Part 7. If the District recommences work on the Project or part thereof that had been suspended subject to a reduction in the scope of the work, the compensation of the Basic CM Fee shall be equitably adjusted and set forth in a revised NTP. Subject to the Construction Manager's compliance with Section 8.6, the District shall compensate the Construction Manager as provided in Part 7 for any Additional CM Services or Reimbursable Costs provided at the request of the District during any suspension.

**Section 8.6 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 must 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 that had been 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 reasonably are not available at the time work on the Project is resumed, the Construction Manager shall assign other personnel of similar skill and experience.

**PART 9: INDEMNIFICATION AND INSURANCE**

**Section 9.1 Indemnification by Construction Manager.** To the maximum extent permitted by law, the Construction Manager shall defend, indemnify and hold-harmless the District and its District Board members, officers, employees and agents (collectively, not including the District, the “District Agents”) from and against any and all claims (including, without limitation, workers’ compensation claims), demands, actions, damages, losses, costs (including, without limitation, attorneys’ fees and expenses), expenses and other liabilities of any nature whatsoever, (each a “Liability”), including, but not limited to, damage to property and injury to any person, including death, to the extent arising from performance of this Agreement by the Construction Manager or the Construction Manager’s actions in connection with the Project. Any defense of the District and/or District Agents shall be conducted 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 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 active negligence or willful misconduct of the District and/or the District Agents, in which event the Parties shall be responsible and liable on a comparative basis. In connection with providing design-related services for the Project, the Architect shall not be deemed or construed to be a District Agent for purposes of this Part 9. The Construction Manager’s obligations pursuant to this Section shall survive the expiration or termination of this Agreement and /or the CM Services.

**Section 9.2 Construction Manager Insurance.**

(a) The Construction Manager shall obtain and maintain during the term of this Agreement all policies of insurance coverage as may be required pursuant to law and this Section. The Construction Manager may maintain the insurance coverage required pursuant to this Section through a combination of primary and excess policies covering the Project. Each liability insurance policy required pursuant to this Section must 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. The Construction Manager having in effect the insurance policies required pursuant to this Section is a material part of the consideration given to the District for this Agreement and any failure by the Construction Manager to maintain or renew such policies as provided herein shall be deemed a material breach by the Construction Manager of its obligations pursuant to this Agreement. If the Construction Manager fails to maintain the insurance policies as required pursuant to this Section, the District, in its sole discretion, may obtain and maintain such insurance coverage as it determines necessary and may 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 performing any CM Services pursuant to this Agreement, the Construction Manager must provide to the District duly-authorized and executed certificates of insurance evidencing that the insurance policies required pursuant to this Section 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 Agreement, but no such review of, or failure to review or appropriately review, such documentation shall be deemed or construed to relieve the Construction Manager from its obligations pursuant to this Section. The Construction Manager shall provide updated Certificates of Insurance to the District for each renewal during the term of this Agreement of an insurance policy required pursuant to this Section.

(c) The insurance policies required pursuant to this Section must be issued by one or more insurers authorized to do business in this State and having an A.M. Best Company rating (Best's Rating) of not less than an "A-" (i.e., 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 this 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 the Construction Manager pursuant to this Agreement ("Liability Policy"). If any aggregate limits apply to the Liability Policy, not less than two million dollars (\$2,000,000) of the general aggregate shall apply specifically to the Project. No self-insured retention shall be permitted without the express consent of the District. The Liability Policy shall contain a cross-liability endorsement and a waiver of the insurer's rights of subrogation against the District. The Liability Policy must name or be endorsed to name each of the District and the District Agents as an additional insured and must 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 9.1 herein, and premises, operations, products, and completed operations liability.

(ii) *Vehicle Liability Insurance.* The Construction Manager shall obtain and maintain during the term of this Agreement a policy of business vehicle liability insurance with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence ("Vehicle Liability Policy"). If any aggregate limit applies, not less than one million dollars (\$1,000,000) must apply specifically to this Agreement and the Project. The Vehicle Liability Policy must name each of the District and the District Agents as an additional insured, and must contain a cross-liability endorsement and a waiver of the insurer's rights of subrogation against the District and the District Agents. The Vehicle Liability Policy must 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 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 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 Agreement a policy of professional liability insurance for, or applicable to, the

CM Services performed pursuant to this Agreement, with a combined single limit of not less than two million dollars (\$2,000,000) per occurrence or claim and two million dollars (\$2,000,000) project specific aggregate (“Professional Liability Policy”). The Professional Liability Policy shall provide coverage for claims arising out of the performance of the CM Services pursuant to this Agreement. Notwithstanding anything to the contrary: (i) the Construction Manager must have the Professional Liability Policy, as described herein, in full force and effect prior to commencing the CM Services; (ii) each renewal or replacement of the Professional Liability Policy must have a retroactive date that is prior to the date the Construction Manager commenced the CM Services; and (iii) as a condition to final payment to the Construction Manager pursuant to this Agreement, the Construction Manager must obtain and maintain the Professional Liability Policy in full force and effect and applicable to claims arising from the CM Services, without any gaps in coverage, for a period of at least three years following final completion of the CM Services required pursuant to this Agreement. If the claims reporting period, as specified in or determined pursuant to the Professional Liability Policy, will terminate, without renewal, prior to the end of the three-year period following final completion of the CM Services, then the Construction Manager, at its cost, must obtain and provide satisfactory evidence to the District of: (i) an endorsement to extend the claims reporting period to include whatever remains of such three-year period; or (ii) a supplemental extended reporting period (tail) applicable to the Professional Liability Policy as required to provide coverage until the end of such three-year period. Such tail coverage shall be required, for example: (i) if the Construction Manager intends to switch insurance carriers and the prospective new carrier will not agree to cover claims arising from the CM Services submitted at any time prior to the end of the three-year period following final completion of the CM Services; (ii) if the Construction Manager’s business is to be wound-up or otherwise terminated, whether voluntarily or involuntarily; or (iii) when necessary for any other reason to ensure that professional liability insurance applicable to the CM Services is in effect at all times required by this Agreement.

## **PART 10: PROHIBITED INTERESTS**

**Section 10.1 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 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 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 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 Agreement.

**Section 10.2 Conflict of Interest.** For the term of this Agreement, no District 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 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 Agreement.

**Section 10.3 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 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 10.4 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 (of any tier) on the Project.

## **PART 11: INTERPRETATION**

**Section 11.1 Time of Essence.** Time is of the essence with respect to this Agreement and each provision herein.

**Section 11.2 Incorporation.** All exhibits referenced herein or attached hereto, and all Recitals stated herein, are hereby incorporated as operative and effective parts of this Agreement.

**Section 11.3 Captions and References.** The captions or headings set forth in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any Part, Section, Subsection, or other provision of this Agreement. Any reference in this Agreement to a Part, Section or Subsection, unless specified otherwise, shall be a reference to a Part, Section, or Subsection of this Agreement.

**Section 11.4 Drafting of Agreement.** In interpreting this 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 Agreement or any particular provision herein.

**Section 11.5 Entire Agreement.** This Agreement sets forth the entire agreement and understanding concerning the provision by the Construction Manager of the CM Services to the District, and this Agreement supersedes and replaces all prior discussions and agreements, written and oral, relating to such matters. Each Party acknowledges that: (i) neither the other Party nor any of its agents, attorneys and other representatives, have made any promise representation, or warranty whatsoever, express or implied, other than those contained herein, to induce the execution of this Agreement; and (ii) this Agreement has not been executed in reliance upon any promise, representation, or warranty not set forth herein.

**Section 11.6 Amendment.** This Agreement may be amended or modified only by means of written amendments that have been duly approved, executed, and delivered by the Parties. To constitute a valid and binding agreement, each amendment to this Agreement must be approved by the District Board.

**Section 11.7 No Third Party Beneficiaries.** The Parties have entered into this 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 Agreement.

**Section 11.8 Severability.** If any Part, Section, Subsection, paragraph, sentence, clause or other provision of this 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 provisions of this 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 11.9 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 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 Agreement.

## **PART 12: DISPUTE RESOLUTION**

**Section 12.1 Governing Law and Venue.** This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State, regardless of any conflict-of-law or choice-of-law provisions in California or other state or federal law. Any arbitration, litigation or other proceeding arising out of or related to this Agreement shall be initiated and conducted only in the County of Riverside, California.

### **Section 12.2 Dispute Resolution.**

**Subsection 12.2.1 General.** The Parties desire to quickly and cost-effectively resolve any disputes related to the interpretation or enforcement of this 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 for mediation, 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.

**Subsection 12.2.2 Statutory Dispute Resolution.** If and to the extent this Agreement is determined to be a “public works contract” as that term is defined in the Public Contract Code, then the provisions of Public Contract Code Section 9204 and, to the extent applicable, Public Contract Code Section 20104 *et seq.* (collectively, the “Dispute Resolution Provisions”), shall be incorporated herein and shall apply to any claim by the Construction Manager arising out of the CM Services (each a “Claim”). The Dispute Resolution Provisions are incorporated herein by this reference. The Dispute Resolution Provisions require that any such Claim be in writing, served by registered or certified mail with return receipt requested, and supported by reasonable documentation of the basis for the Claim. The Construction Manager must file any and all Claims prior to submitting to the District an invoice for final payment for the Work. The District shall respond in writing to each Claim in writing within forty-five days following receipt of the Claim and shall pay any undisputed portion of the Claim as required pursuant to the Dispute Resolution Provisions. If the Construction Manager disputes the District’s response to a Claim, or the District does not timely respond to a Claim, the Construction Manager may submit to the District a written demand to meet and informally confer regarding settlement of the Claim. In such event, the District shall schedule such meeting to occur within thirty days following receipt by the District of the written demand. If, following such meeting, any portion of the Claim remains in dispute, the Parties shall submit the Claim to non-binding mediation as required by the Dispute Resolution Provisions. If a Claim for \$375,000 or less remains in dispute following such mediation, and a civil action is commenced to resolve the Claim, judicial arbitration shall be required pursuant to Public Contract Code Section 20104.4. The Construction Manager should review Public Contract Code Sections 9204 and 20104 *et seq.* if the Construction Manager desires additional details regarding the Dispute Resolution Provisions.

**Section 12.3 Attorneys’ Fees.** With respect to each action or other proceeding between or involving the Parties that arises out of or in connection with this Agreement, each Party shall be responsible for paying its own costs, including, without limitation, attorneys’ fees and costs of suit.

**Section 12.4 Damages for Delay.** The Parties acknowledge and agree that the District will suffer damages if the Construction Manager fails to perform the CM Services in strict accordance with this Agreement. If and to the extent any damages for which the Construction Manager is responsible in connection with this Agreement are within the scope of Public Contract Code Section 7203 (“Delay Damages”), then such Delay Damages shall be liquidated in accordance with Government Code Section 53069.85 and this Section. Because it is impractical and infeasible to determine the actual amount of Delay Damages the District will incur in connection with a delay in completion of the Work for which the Construction Manager is responsible,



the District shall assess liquidated damages against the Construction Manager at the rate of \$1000.00 for each and every calendar day (or portion thereof if not a full day) of such delay ("Liquidated Damages"). Liquidated Damages shall constitute compensation to the District for the delay caused by the Construction Manager and shall not be construed as a penalty or forfeiture of any other right or remedy that is available pursuant to this Agreement or applicable law. In the event the Construction Manager fails to pay any such Liquidated Damages, the District may deduct such amount(s) from any payments that are or become due to the Construction Manager pursuant to this Agreement. Nothing in this Section shall be deemed or construed to preclude the District from recovering other or additional damages, as provided by this Agreement or applicable law, as may be attributable to any breach or default by the Construction Manager of its obligations pursuant to this Agreement.

### **PART 13: SERVICE OF DEMANDS AND OTHER NOTICES**

**Section 13.1 General Requirements.** Any and all demands and other notices required or permitted to be given pursuant to this Agreement (each a "Notice") must be in writing and must be given or served in accordance with this Part 13.

**Section 13.2 Methods of Delivery.** Each Notice must be sent via: (i) personal delivery at the recipient's address as specified in Exhibit C hereto, (with signature of recipient and recipient's name legibly written on delivery receipt); (ii) registered or certified United States mail delivered to the recipient's address as specified in Exhibit C hereto (postage pre-paid and return receipt requested); (iii) delivery to the recipient's address as specified in Exhibit C hereto by FedEx, U.P.S. or other reliable, private delivery service (with signature of recipient obtained on electronic or other delivery receipt); or (iv) electronic mail (email) transmission (with confirmation of transmission printed from the sender's machine and retained in sender's records, and a copy of such confirmation provided to recipient immediately upon request).

**Section 13.3 Persons to Whom Notices Must be Sent.** Notices sent to the District must be addressed and delivered each of the Authorized District Representatives identified in Exhibit C hereto, and to the Architect. Notices sent to the Construction Manager must be addressed and delivered to any of the Authorized CM Representatives. A Party may change its address or other delivery information by giving notice in accordance with this Part 13.

**Section 13.4 Giving or Service of Notice.** A Notice shall be deemed given or served only upon actual receipt by the addressee. In the case of email, "actual receipt" shall mean delivery to the recipient's email in-box. If a Notice, including, without limitation, any Notice sent by email, is delivered on a day that is not a business day or on any day after 4:00 p.m. Pacific time, the Notice shall be deemed given or served as 9:00 a.m. Pacific time on the next day that is a business day. For purposes of this Agreement, a "business day" means any day that is not a Saturday or Sunday, not a federal, State or local holiday, or, with respect to District administrative staff, not a furlough day mandated by the State or the District. As an additional condition to sending a Notice by email, the reference line must indicate that it is a "Notice Pursuant to Agreement for CM Services." Because email addresses are subject to change more frequently than physical addresses, if a Notice is to be sent by email, unless the sender has personal knowledge of the correct email address of each intended recipient, the sender must call and verify the then-current email address of each intended recipient prior to sending the Notice.

**Section 13.5 Applicability of Part.** The requirements of this Part 13 shall not be deemed or construed to apply to: (i) communications of the District and/or the Construction Manager necessary for day-to-day administration of this Agreement or the CM Services; or (ii) service of process in accordance with any applicable law or rule of court.

**PART 14: EXECUTION AND DELIVERY**

**Section 14.1 Counterparts.** This Agreement may be executed in counterparts, electronically or otherwise, each of which shall be an original and all of which shall constitute but one and the same instrument. Signature pages may be detached from counterpart originals and combined in one or more copies of this Agreement to physically form copies of this Agreement having original signatures of both Parties.

**Section 14.2 Due Authority.** Each individual signing this Agreement represents and warrants that he or she has been authorized by appropriate action of the Party that he or she represents to sign, and thereby bind such Party to, this Agreement.

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

***Perris Union High School District***

***Paul C. Miller Co. Inc., dba Miller Construction***

**By:** \_\_\_\_\_  
Candace Reines, Deputy Superintendent of  
Business Services

**By:** \_\_\_\_\_  
Todd Miller, President

**EXHIBIT A**

**DESCRIPTION OF PROJECT**

1. Project Name: Heritage High School Pool, Team Rooms and Campus Maintenance Addition
2. Project Site Location: 2600 Briggs Road, Menifee, CA 92585
3. General Project Scope: CM Services for the construction of Heritage High School Pool, Team Rooms and Campus Maintenance Addition and all related onsite and offsite improvements per project documents.
4. Construction Delivery Method: Multiple prime contracts administered by Construction Manager in accordance with this Agreement.
5. Construction Contractor: Multiple prime contractors to be determined through competitive bidding.
6. Construction Commencement Date and Required Completion Date: These dates are contingent on the project timeline and are based on complete approval of plans by the Division of State Architect.
7. Estimate Total of Base Bids: \$8,937,487.00.
8. Total Construction Budget: The construction budget (i.e., excluding soft costs) for the Project is: \$10,000,000.00
9. Total Project Budget: The total project budget (including design and other soft costs, as well as construction costs) for the Project is: \$12,500,000.00.

## **EXHIBIT B**

### **SCOPE OF CM SERVICES**

The Construction Manager shall provide the CM Services specified in this Scope of CM Services consistent with all other provisions of this 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). The Construction Manager shall provide all necessary and typical CM Services, including, but not limited to:

#### **I. PRE-CONSTRUCTION PHASE SERVICES**

- (a) Design Coordination: Assist the District in administrating and monitoring the design phase for the Project by providing the following services:
- (1) Advise the District on compliance of the design of the Project with the approved Project Construction Budget.
  - (2) Advise the District on the timely communication of design-review comments.
  - (3) Advise the District on implementation of design change orders and the impact of such change orders on the Project Total Budget.
  - (4) Attend design review meetings on a regular basis and as directed by the District.
  - (5) Prepare and reconcile cost estimates.
- (b) 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. However, nothing in this Agreement shall be deemed or construed to make the Construction Manager responsible for matters that are within the scope of responsibility of the Architect or other design professionals employed by the District in connection with the Project. Review by the Construction Manager 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:
- (1) Recommend changes in design and construction systems or techniques in order to reduce construction duration and keep costs within the Project Construction Budget and Project Total Budget.
  - (2) Identify potential construction-phasing problems in the design for the Project and recommend solutions for such problems. 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.

- (3) 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.
  - (4) 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. Manage and coordinate the development of Project Plans with the Architect. Review Project Plans 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. Inspect, review, revise and assure proper assembly and delivery of the Project manuals and specifications.
  - (5) 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.
  - (6) Improve building quality by recommending and implementing clear and simple construction systems, techniques, and details.
  - (7) Review the reasonableness of the planned work sequence, coordination of the documents for the various contractors and bid packages, and periods of performance by such contractors.
  - (8) Check construction schedules and phasing plans for adequacy of lead times for material and equipment procurement.
  - (9) Review site restrictions and adequacy of access, work areas, and disposal sites. Coordinate the moving, relocation, temporary housing and storing of District property prior to the construction phase.
  - (10) Check the accuracy of coordination between construction drawings and other documents.
  - (11) Ensure that changes made during the design process are incorporated into final Project Plans and other appropriate documents.
- (c) Cost Estimating: Develop an independent construction cost estimate in accordance with the following:
- (1) 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.
  - (2) Fees and General Conditions shall be specified as separate line-item costs.

- (3) The estimate shall be prepared on the basis of specification section and summarized by the Construction Specifications Institute category.
  - (4) The estimate shall specify separate line-item categories and totals for the building construction costs, site costs, and utilities costs.
  - (5) 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).
- (d) Construction Management Plan: In consultation with the Architect, the Construction Manager shall prepare a "Construction Management Plan" 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:
- (1) 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.
  - (2) Permits: Assist the 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.
  - (3) 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 Trade Contractors, including, without limitation, ensuring compliance with requirements for advertisements. Assist in preparation of construction contracts in coordination with District, Architect and District legal counsel.
  - (4) 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.

- (5) 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.
- (6) 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.
- (7) 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.
- (8) Rebidding: If rebidding is required, assist in revising the scope and/or quality of work to reduce the construction costs to within the Project Construction Budget. Assist in rebidding of all or applicable portions of the Project.
- (9) Procurement: Identify and review sources of supplies and services. Develop a schedule for procurement of long-lead time items, capital equipment, and fixtures. Coordinate and expedite delivery, storage, and security of procured items.
- (10) 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.
- (11) 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.
- (12) 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.
- (13) 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 the District, including, without limitation, meetings of the District Board.

- (14) 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.
- (15) Quality Assurance Program: Assist Architect in developing and managing a Quality Assurance Program to ensure compliance with Project Plans by contractors.
- (16) 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.
- (17) State Agencies: Assist the 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.
- (18) Communications to the District Board: Prepare written communications and/or attend meetings of the District Board to provide updates on the progress and status of the Project.
- (19) 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.

## **II. CONSTRUCTION PHASE SERVICES**

- (a) Provide construction management supervision, administration, oversight and coordination of the Project and all contracts associated with the Project, including, but not limited to, the following:
  - (1) Project Schedule: Implement, maintain, and monitor contractor compliance with the Project schedules. Revise the Project schedule as necessary to avoid or minimize delays. Regularly update to current conditions, reissue, and distribute the Project schedule.
  - (2) 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.



- (3) Contract Submittals: Obtain certificates of insurance, bonds, certifications and other contract documents from contractors, review for completion and adequacy, and forward to the District.
- (4) Plan Submittals and Requests for Information (“RFIs”): In conjunction with the 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 the Architect and the 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.
- (5) On-Site Records: Develop and implement a comprehensive document management program. Maintain at the Project Site, on a current basis: (i) 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; (ii) shop drawings, product data, samples and other submittals; (iii) records regarding materials and equipment incorporated into the Work; and (iv) copies of all applicable handbooks, maintenance and operating manuals and instructions, and other Project-related documents. 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.
- (6) 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 and/or other necessary facilities. Coordinate mobilization of contractors and construction sequencing. Stormwater Management: Assist the District in executing its responsibilities to comply with applicable laws, rules and regulations related to stormwater control and management, including the requirements of any National Pollution Discharge Elimination System (i.e., “NPDES”) permits and Storm Water Pollution Prevention Plans (each a “SWPPP”). 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 when required by applicable laws, rules, and regulations.
- (7) Testing and Inspections: Coordinate all testing and inspections 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.
- (8) Labor Compliance: Assist the District and its consultant(s) in executing labor compliance responsibilities in accordance with Labor Code Section 1771.5 and other provisions of law, including, but not limited to, Section 16100 of Title 8, Division 1, Chapter 8, Subchapter 3, Article 3 of the California Code of Regulations.

- (9) **Contract Administration:** Administer the construction contracts as set forth herein and as provided in the general provisions 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 Agreement. Provide sufficient qualified and experienced personnel and management to adequately carry out the requirements of this Agreement.
- (10) **Correspondence:** Prepare and send correspondence to contractors and other parties in regard to Project-related matters.
- (11) **Public Records:** Respond or, as appropriate, assist the District in responding, to requests for public records pursuant to the Public Records Act.
- (12) **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 the District and the Architect regarding observation of construction. Diligently endeavor to guard against defects and deficiencies in the work and advise the District and the 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.
- (13) **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 the District. Make the log available to the District on a regular basis and upon reasonable request. Prepare, update, and distribute construction schedules on a regular basis to maintain the Master Project Schedule. Assign percentage-complete values based on actual observation and evaluation of construction progress by the 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 effect 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, the District, the Architect and other appropriate parties.
- (14) **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 the District and the 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.

- (15) **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.
- (16) **Evaluate and Develop Change Orders:** Assist the Architect in evaluating the contractor proposals for change orders and costs thereof, and make recommendations to the District and Architect regarding the acceptance of proposed change orders. Assist the District and Architect in preparing proposed change orders and determining the effect on costs thereof. Assist the District and the Architect in negotiating change order costs and time extensions.
- (17) **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 the District instructions or contrary to any contract between the 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 the 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. **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.
- (18) **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 the District and the Architect.
- (19) **Project Status Reports:** Prepare and distribute on a regular basis reports on the status of construction. Ensure contractors complete and provide verified reports required pursuant to Title 24 of the California Code of Regulations.
- (20) **Daily Reports:** Collect, review, and maintain all contractors' daily reports.
- (21) **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 the District and the 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.
- (22) **Punch Lists:** Develop punch lists in conjunction with the 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 the 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.

- (23) Start-Up and Testing: Ensure proper installation of utilities, operational systems and equipment, and, in conjunction with the Architect and the District, verify readiness for operations. Assist with initial start-up and testing of utilities, systems, and equipment. Coordinate and assist with District move-in.
- (24) 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 the Architect, timely evaluate each claim in accordance with contract requirements and applicable law, and report to the District in regard to validity of claim. Timely analyze and report in written narrative form to the District regarding cost and time impacts of claim and each possible reasonable alternative resolution of claim, including, without limitation, impact on the 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.
- (25) The Construction Manager shall review the safety programs developed by each of the contractors for purposes of coordinating the safety programs with those of the other contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the contractors; the subcontractors, agents or employees of the contractors, or any other persons performing portions of the work and not directly employed by the Construction Manager.

### **III. POST-CONSTRUCTION PHASE SERVICES**

- (a) Provide all necessary, normal and usual post-construction services, including, but not limited to, the following:
  - (1) Warranties: 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 Agreement.
  - (2) Other Documentation and Items: Collect and review for completeness all operations and maintenance manuals from contractors and equipment suppliers, and provide to the 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.

- (3) Training: Coordinate and schedule training for the District's staff in regard to operation and maintenance of all building and other systems.
- (4) 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.
- (5) 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.
- (6) Close-Out: Assist the District and the Architect with all Project close-outs, including, without limitation, obtaining Division of State Architect certification.
- (7) Audits: Assist the District and the Architect with any audits of the Project that are initiated prior to final payment to the Construction Manager pursuant to this Agreement or within a period of one year thereafter.

**EXHIBIT C**

**PARTY CONTACT INFORMATION  
AND AUTHORIZED REPRESENTATIVES**

Construction Manager Contact Information (including for purposes of Part 13 herein):

Paul C. Miller Construction Co. Inc., dba Miller Construction  
Attn: Todd Miller  
8447 Maple Place  
Rancho Cucamonga, CA 91730  
Telephone No. 909-484-1009

Authorized CM Representatives:

1.     Name (Primary Contact):   Todd Miller  
          Title:                         President – Miller Construction  
          Limitation(s) on Authority:   Has full authority for implementation and management of day-to-day activities associated with the Project, and is the Construction Manager’s primary contact person for purposes of this Agreement and the Project.

District Contact Information (including for purposes of Part 13 herein):

Perris Union High School District  
Attn: Hector Gonzalez  
155 East 4<sup>th</sup> Street  
Perris, CA 92570  
Telephone No. (951) 943-6369

Authorized District Representatives:

1.     Name (Primary Contact):   Hector Gonzalez  
          Title:                         Director of Facilities  
          Limitation(s) on Authority:   Has full Project authority, subject only to District Board approval of agreements, change orders, *et cetera*, and is the District’s primary contact person for purposes of this Agreement and the Project. Authority includes, but is not limited to, management of day-to-day construction operations.
  
2.     Name:                             Art Fritz  
          Title:                         Director of Facilities Services  
          Limitation(s) on Authority:   Has full Project authority, subject only to District Board approval of agreements, change orders, *et cetera*, and is the District’s secondary

contact person in the event the primary contact is unavailable or in other extraordinary circumstances.

3. Name: Candace Reines  
Title: Deputy Superintendent  
Limitation(s) on Authority: Has full Project authority, subject only to District Board approval of agreements, change orders, *et cetera*, is the primary Authorized District Representative for purposes of Notices; is the Authorized District Representative who will sign any and all agreements associated with the Project; and is the District's tertiary contact person in the event the primary and secondary contacts are both unavailable or in other extraordinary circumstances.

**EXHIBIT D**

**CONSTRUCTION MANAGER COMPENSATION**

(A) Basic CM Fee:

The Basic CM Fee shall be assessed as follows:

<b>Construction Fee Schedule</b>	<i>Dollar Amount</i>
8% of 500,000	
7.5% of next 500,000	
7% of next 1,000,000	
6% of next 4,000,000	
5% of next 9,000,000	\$450,000.00
4% of anything over 10,000,000	
<b>Total Fee</b>	<b>\$450,000.00</b>

(B) General Conditions:

For purposes of this Agreement, General Conditions for which the Construction Manager may seek reimbursement, as provided in Section 7.2 herein, are as set forth as follows:

<b>General Conditions @ 5%</b>		
10.04	Supervision	\$125,000.00
10.05	Project Manager	\$55,000.00
10.06	Project Engineer	\$30,000.00
10.07	Foreman	\$25,000.00
10.36	Clerical	\$18,000.00
49.55	Safety	\$5,000.00
340.00	Temporary Fence	\$15,000.00
420.00	Equipment Rentals	\$10,000.00
446.00	Engineering and Layout	\$15,000.00
447.00	Schedule	\$7,500.00
450.00	Misc	\$25,000.00
460.00	Toilets	\$12,500.00
461.00	Telephone	\$4,500.00
462.00	Temporary Water and Power	\$10,000.00
463.00	As Builts	\$5,000.00
465.00	Trailer	\$22,500.00
490.00	Truck Expense	\$25,000.00
510.00	Cleanup	\$40,000.00
530.00	Security	
	<b>Total GCs 5%</b>	<b>\$450,000.00</b>



(C) Schedule of Hourly Rates:

If compensation to the Construction Manager for Additional CM Services pursuant to Section 7.6 herein, or otherwise as agreed by the Parties, is to be paid, in whole or in part, based on hourly labor rates for the personnel providing the services, the rates shall conform to the following schedule of hourly rates unless and except to the extent the Parties agree otherwise. Such hourly rates shall be deemed and construed to be “all inclusive” compensation to the Construction Manager, including, without limitation, with respect to any and all overhead, profit, payroll taxes, *et cetera*

		Rate
<b>TASK</b>		
<b>Project Management</b>		
Project Executive	\$	120.00
Senior Project Manager	\$	120.00
General Superintendent	\$	120.00
Project Superintendent(s)	\$	95.00
Assistant Superintendts)	\$	85.00
Project Manger	\$	85.00
Foreman	\$	75.00
Project Engineer	\$	75.00
Laborer	\$	55.00
Clerical	\$	50.00
Field Office Support Staff	\$	40.00