

**AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES**

**SAN BRUNO PARK SCHOOL DISTRICT**

**WITH**

\_\_\_\_\_

**FOR**

**[NAME OF PROJECT]**

\_\_\_\_\_, 2019

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## AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

This Agreement for Construction Management Services ("Agreement") is made as of [REDACTED], 2019, between the San Bruno Park School District, a California public school district ("District"), and [REDACTED] ("Construction Manager") (both collectively "Parties"), for the following project ("Project"):

The construction administration of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Comment [RDS1]:** INSERT BRIEF DESCRIPTION OF THE PROJECT THAT INCLUDES THE ADDRESS OF THE PROJECT SITE.

See **Exhibit "A"** for detailed Project scopes.

The Project may include multiple components. Any one of the components or combination thereof may be changed, including terminated, in the same manner as the Project, as indicated herein, without changing in any way the remaining component(s). The provisions of this Agreement shall apply to each component without regard to the status of the remaining component(s). Construction Manager shall invoice for each component separately and District shall compensate Construction Manager for each component separately on a proportionate basis based on the level and scope of work completed for each component.

For and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

### ARTICLE 1. Definitions

- 1.1 In addition to the definitions above, the following definitions for words or phrases shall apply when used in this Agreement, including all Exhibits:
  - 1.1.1 **Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
  - 1.1.2 **Architect:** The architect(s) that the District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s).
  - 1.1.3 **As-Built Drawings ("As-Builts"):** Any document prepared and submitted by District Contractor that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by Construction Change Documents and change orders, and detailed by the District's construction Contractor on a Conforming Set.
  - 1.1.4 **Board:** The District's Governing Board.
  - 1.1.5 **Conforming Set:** The plans, drawings, and specifications at the end of the Bidding Phase that

incorporate all addenda, if any, issued during the Bidding Phase.

- 1.1.6 **Construction Budget:** The total amount indicated by the District for the Project plus all other costs, including design, construction, administration, financing, and all other costs.
- 1.1.7 **Construction Change Documents ("CCD"):** The documentation of changes to the DSA-approved construction documents.
- 1.1.8 **Construction Cost Budget:** The total cost to District of all elements of the Project designed or specified by the Architect, as adjusted during and at the end of the design phase in accordance with this Agreement and the Agreement for Architectural Services. The Construction Cost Budget does not include the compensation of the Project Design Team, the Program Manager (if any), the Construction Manager and any subconsultants, the cost of the land, rights-of-way, or financing which are the responsibility of the District.
- 1.1.9 **Construction Manager:** The entity listed in the first paragraph of this Agreement.
- 1.1.10 **Consultant(s):** Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Construction Manager.
- 1.1.11 **Contractor:** One or more licensed and registered contractors under contract with the District for construction of all or a portion of the Project.
- 1.1.12 **Design Team:** The Architect(s) that the District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s), plus all engineer(s) or other designer(s), who have a responsibility to the District to design all or a portion of the Project either directly or as a subconsultant or subcontractor.
- 1.1.13 **DIR:** California Department of Industrial Relations.
- 1.1.14 **District:** The San Bruno Park School District.
- 1.1.15 **DSA:** Division of the State Architect in the California Department of General Services.
- 1.1.16 **Extra Services:** District-authorized Services outside of the scope in **Exhibit "A"** or District-authorized reimbursables not included in Construction Manager's fee.

- 1.1.17 **Fee:** The Construction Manager's Fee is defined in Section 6.1, payable as set forth in Article 6 and in **Exhibit "D."**
- 1.1.18 **District's Representative:** The individual identified herein that is authorized to act on the District's behalf with respect to the Project. The initial District's Representative shall be **[Name], [Title]**. District may change the District's Representative by notice as set forth herein.
- 1.1.19 **Program Manager:** Any program manager hired to perform program management services for the District, including all Consultant(s) to the Program Manager. If no Program Manager is hired by the District for the Project, then all references to "Program Manager" shall be read and interpreted as the District.
- 1.1.20 **Project Inspector, Inspector of Record, IOR:** The agent of the DSA at the project site whose primary responsibility will be to insure that the project is constructed in compliance with current codes; DSA-approved plans and specifications relating to fire life safety, structure, and accessibility; and quality controls required of a public works facility. The IOR will report to both the DSA and the Architect.
- 1.1.21 **Record Drawings:** A final set of drawings prepared by the Architect that incorporates all changes from all As-Builts, sketches, details, and clarifications.
- 1.1.22 **Service(s):** All labor, materials, supervision, services, tasks, and work that the Construction Manager is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of the Project.

## **ARTICLE 2. Scope, Responsibilities And Services Of Construction Manager**

- 2.1 **Scope:** Construction Manager shall provide the Services described herein and under **Exhibit "A"** for the Project.
- 2.2 **Coordination:** In the performance of Construction Manager's services under this Agreement, Construction Manager agrees that it will maintain coordination with District-designated representatives as may be requested and desirable. This shall include, without limitation, coordination with all members of the District's Design Team, the Project Inspector, and the Program Manager, if any. If the Construction Manager employs sub-consultant(s), the Construction Manager shall ensure that its contract(s) with its sub-consultant(s) include language incorporating the terms of this Agreement.

- 2.3 **Construction Manager's Services:** Construction Manager shall act as the District's agent to render the services and furnish the work as described in **Exhibit "A,"** which will commence upon the receipt of a Notice to Proceed signed by the District representative. Construction Manager's services will be completed in accordance with the schedule attached as **Exhibit "C."**
- 2.4 During the Construction Phase of the Project, the District may require that the Contractors submit all notices and communication relating to the Project directly to the Construction Manager.
- 2.5 **Review of General Obligation Bond Program Report and District's Facilities Master Plan:** Construction Manager shall review the District's Facilities Master Plan for the District and other written materials made available by the District to Construction Manager to understand fully the nature, extent and intent of the Facilities Plan and the Project.
- 2.6 **Review of Measure X:** Construction Manager shall review Measure X and other written materials made available by the District to Construction Manager which relate to Measure X to fully understand the extent of funding available to implement the District's Master Facilities Plan for the District, the anticipated schedule for issuance of Bonds under Measure X relative to the anticipated design, bidding and construction of projects.

**ARTICLE 3. Construction Manager Staff**

- 3.1 The Construction Manager has been selected to perform the work herein because of the Construction Manager's skills and expertise.
- 3.2 The Construction Manager agrees that the following key people in Construction Manager's firm shall be associated with the Project in the following capacities:

Principal In Charge: \_\_\_\_\_

Project Director: \_\_\_\_\_

Construction Manager: \_\_\_\_\_

Project Manager: \_\_\_\_\_

Asst. Construction Manager: \_\_\_\_\_

Asst. Project Manager: \_\_\_\_\_

Other: \_\_\_\_\_

Other: \_\_\_\_\_

Other: \_\_\_\_\_

**Comment [RDS2]:** CM must fill in blanks below. District must approve.

- 3.3 The Construction Manager shall not change any of the key personnel listed above without prior written approval by District, unless said personnel cease to be employed by Construction Manager. Regardless of the reason for the change in key personnel, District shall be allowed to interview and approve replacement personnel.
- 3.4 If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice by the District, the Construction Manager shall immediately remove that person from the Project and provide a temporary replacement. Within seven (7) days of such removal, Construction Manager shall provide a permanent replacement person acceptable to the District. All lead or key personnel for any Consultant must also be designated by the Consultant and are subject to all conditions stated in this Agreement.
- 3.5 Construction Manager represents that the Construction Manager has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of services required under this Agreement and that no person having any such interest shall be employed by Construction Manager.

**ARTICLE 4. Schedule Of Work**

The Construction Manager shall commence work under this Agreement upon receipt of a Notice to Proceed, and shall prosecute the work diligently as described in **Exhibit "A"** in accordance with the schedule attached as **Exhibit "C."** Time is of the essence and failure of Construction Manager to perform work on time as specified in this Agreement is a material breach of this Agreement.

**ARTICLE 5. Construction Cost Budget**

- 5.1 The Construction Manager shall have responsibility, along with the Architect, to develop, review, and reconcile the Construction Cost Budget with the Architect and the District throughout the design process and construction.
- 5.2 The Construction Cost Budget shall be the total cost to District of all elements of the Project designed or specified by the Project design professional(s), as defined in Article 1.
- 5.3 Construction Manager shall work cooperatively with the Project Design Team throughout the Project, including but not limited to, the Schematic Design Phase, Design Development Phase, and Construction Documents Phase, as described in **Exhibit "A,"** so that the construction cost of the work designed by the Project Design Team will not exceed the Construction Cost Budget, as may be adjusted subsequently with the District's written approval. The Construction Manager shall notify the District if it believes the construction cost of the work by the Project Design Team will

exceed the Construction Cost Budget, and/or if it believes the construction cost of the Project will exceed the Construction Cost Budget for the Project. The Construction Manager, however, shall not perform or be responsible for any design or architectural services.

- 5.4 Evaluations of the District's Construction Budget, and preliminary and detailed cost estimates prepared by the Construction Manager, represent the Construction Manager's best judgment as a professional familiar with the construction industry.
- 5.5 If the Bidding Phase has not commenced within ninety (90) days after DSA approval, the Construction Cost Budget may be adjusted at District's request to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the District and the date on which proposals are sought.
- 5.6 The District may, in its sole discretion, do one, or a combination, of the following if any of the events in Article 5.7 occur:
  - 5.6.1 Give Construction Manager written approval of an agreed adjustment to the Construction Cost Budget.
  - 5.6.2 Authorize Construction Manager to re-negotiate, when appropriate, and/or re-bid the Project within three (3) months' time of receipt of bids (exclusive of District and other agencies' review time) at no additional cost to the District.
  - 5.6.3 Terminate this Agreement if the Project is abandoned by the District, without further obligation by either party.
  - 5.6.4 Within three (3) months of receipt of bids, instruct Design Team to revise the drawings and specifications (in scope and quality as approved by the District) to bring the Project within the Construction Cost Budget for re-bidding with Construction Manager performing cost estimation, value engineering, constructability reviews, and/or bidding support at no additional cost to the District.
- 5.7 If any of the following events occur, the District may exercise any one, or any combination, of the actions set forth in Article 5.6 above:
  - 5.7.1 The lowest responsive base bid received is five percent (5%) or more in excess of the Construction Cost Budget or
  - 5.7.2 If the combined total of base bid and all additive alternates come in ten percent (10%) or more under the Construction Cost Budget; or



- 5.7.3 If the Construction Cost Budget increases in phases subsequent to the Schematic Design Phase due to reasonably foreseeable changes in the condition of the construction market in San Mateo County, in so far as these have not been caused by Acts of God, earthquakes, strikes, war, or energy shortages due to uncontrollable events in the world economy.

**ARTICLE 6. Fee And Method Of Payment For Basic Services**

- 6.1 District shall pay Construction Manager an amount **not to exceed** \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for all services contracted for under this Agreement and based on the Fee Schedule set forth in **Exhibit "D."**
- 6.2 District shall pay Construction Manager the Fee pursuant to the provisions herein and in **Exhibit "D."**
- 6.3 Construction Manager shall bill its work under this Agreement on a percent of completion basis in accordance with **Exhibit "D."**
- 6.4 No increase in fee will be due from change orders generated during the construction period to the extent caused by Construction Manager's error.
- 6.5 The Construction Manager's fee set forth in this Agreement shall be full compensation for all of Construction Manager's Services incurred in the performance hereof as indicated in **Exhibit "D,"** including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Project location, offices, per diem expenses, printing, providing or shipping of deliverables in the quantities set forth in **Exhibit "A."**

**Comment [RDS3]:** Optional: "equal to"

**ARTICLE 7. Payment for Extra Services**

- 7.1 Any charges for Extra Services shall be paid by the District as described in **Exhibit "B"** at the rates set forth in **Exhibit "D"** only upon certification that the claimed Extra Services were authorized in writing in advance by the District and that the Extra Services have been satisfactorily completed.
- 7.2 A written proposal describing the proposed scope of services and listing the personnel, labor duration, rates, and cost shall be submitted by the Construction Manager to the District for written approval before proceeding with any Extra Services.

**ARTICLE 8. Ownership of Data**

- 8.1 All of the work product of the Construction Manager, prepared or generated, in connection with this Agreement is the property of the District.

- 8.2 Upon request of the District, the Construction Manager shall make available to the District all work product completed or in progress at the time of such a request.
- 8.3 After completion of the Project or, if the District exercises the right to terminate this Agreement pursuant to the terms hereof, after termination of this Agreement, Construction Manager shall assemble and deliver to District all of the work product of the Construction Manager generated, prepared, reviewed or compiled in connection with this Agreement and the Services and authorized Extra Services hereunder. This includes, without limitation, a complete set of Project records, including without limitation all documents generated by Construction Manager, copies of all documents exchanged with or copied to or from all other Project participants, and all closeout documents. Said Project records shall be indexed and appropriately organized for easy use by District personnel.
- 8.4 All Project records are property of the District, whether or not those records are in the Construction Manager's possession. District retains all rights to all copyrights, designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that Construction Manager or its Consultants prepare or cause to be prepared pursuant to this Agreement, but Construction Manager and its Consultants shall be entitled to reuse work product generated under this Agreement.

**ARTICLE 9. Termination of Contract**

- 9.1 If Construction Manager fails to perform Construction Manager's duties to the satisfaction of the District, or if Construction Manager fails to fulfill in a timely and professional manner Construction Manager's material obligations under this Agreement, or if Construction Manager shall violate any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement effective immediately upon the District giving written notice thereof to the Construction Manager. In the event of a termination pursuant to this subdivision, Construction Manager may invoice District for all work performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of Construction Manager's actions, errors, or omissions.
- 9.2 District shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Construction Manager may invoice District and District shall pay all undisputed invoice(s) for work performed until the notice of termination. This shall be the only amount(s) potentially owing to Construction Manager if there is a termination for convenience.

- 9.3 The Construction Manager has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement and fails to cure such material default within sixty (60) days of receipt of written notice of said defaults, or if the default cannot be cured within sixty (60) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from Construction Manager. Such termination shall be effective after receipt of written notice from Construction Manager to the District.
- 9.4 Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 9.5 If, at any time in the progress of the Project, the District determines that the Project should be terminated, the Construction Manager, upon written notice from the District of such termination, shall immediately cease work on the Project. The District shall pay the Construction Manager only the fee associated with the services provided and approved by District since the last paid invoice and up to the notice of termination.
- 9.6 If the Project is suspended by the District for more than one hundred and eighty (180) consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the schedule shall be adjusted and the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Construction Manager's services. Upon resumption of the Project after suspension Construction Manager shall make every effort to maintain the same Project personnel.

**ARTICLE 10. Indemnity**

- 10.1 To the furthest extent permitted by California law, Construction Manager shall indemnify and hold free and harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("the Indemnified Parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim") that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Construction Manager, its officers, employees, subcontractors, consultants, or agents, including without limitation the payment of all consequential damages. Construction Manager shall also, to the furthest extent permitted by California law, defend the Indemnified Parties at Construction Manager's own expense, including attorneys' fees and costs, from any and all Claim(s) and allegations relating thereto.

- 10.2 Construction Manager shall pay and satisfy any judgment, award, or decree that may be rendered against the Indemnified Parties in any Claim. Construction Manager's obligation pursuant to Article 10.1 includes reimbursing the District for the cost of any settlement paid by the Indemnified Parties and for any and all fees and costs, including but not limited to legal fees and costs, expert witness fees, and consultant fees, incurred by the Indemnified Parties in the defense of any Claim(s) and to enforce the indemnity herein. Construction Manager's obligation to indemnify shall not be restricted to insurance proceeds. District shall also have the right to accept or reject any legal representation that Construction Manager proposes to defend the Indemnified Parties. The District's acceptance shall not be unreasonably withheld.
- 10.3 District may withhold any and all costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Construction Manager from amounts owing to Construction Manager.

**ARTICLE 11. Conduct on Project Site and Fingerprinting**

- 11.1 Unacceptable and/or loud language will not be tolerated. "Cat calls" or other derogatory language toward students or public will not be allowed.
- 11.2 Drugs, alcohol, and smoking on District property are strictly prohibited. No drugs, alcohol and/or smoking are allowed at any time in any building and/or grounds on District's property. No students, staff, visitors or contractors are to use drugs on District's property.
- 11.3 Unless the District has determined pursuant to Education Code section 45125.2 that on the basis of the scope of work in this Agreement that Construction Manager and its subcontractors and employees will have only limited contact with pupils, the Construction Manager shall comply with the provisions of Education Code section 45125.01 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Construction Manager shall not permit any employee to have any contact with District pupils until such time as the Construction Manager has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Construction Manager's responsibility shall extend to all employees, agents, and employees or agents of its subcontracts regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Construction Manager. Verification of compliance with this section and the Criminal Background Investigation Certification (**Exhibit "E"**) shall be provided in writing to the District prior to each individual's

commencement of employment or participation on the Project and prior to permitting contact with any student.

**ARTICLE 12. Responsibilities of the District**

- 12.1 The District shall examine the documents submitted by the Construction Manager and shall render decisions so as to avoid unreasonable delay in the process of the Construction Manager's services.
- 12.2 The District shall provide to the Construction Manager as complete information as is available to District regarding the District's requirements for the Project.
- 12.3 The District shall retain design professional(s) whose services, duties and responsibilities shall be described in written agreement(s) between the District and design professional(s).
- 12.4 Unless the contract documents require that Contractor provide any of the following, the District shall, in a timely manner, and with Construction Manager's assistance, secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, subject to Construction Manager's and/or the design professional(s) duties to recommend or provide same.
- 12.5 The District, its representatives, and consultants shall communicate with the Contractor either directly or through the Construction Manager.
- 12.6 The District shall designate an officer, employee and/or other authorized representatives to act on the District's behalf with respect to the Project. The District's representative for the Project shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

**ARTICLE 13. Liability of District**

- 13.1 Other than as provided in this Agreement, District's obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
- 13.2 Any and all costs incurred by District, or for which District may become liable, to the extent caused by negligent delays, acts, or omissions of Construction Manager in its performance hereunder,

shall be paid to District by Construction Manager as provided for herein and/or under California law.

- 13.3 District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Construction Manager, or by its employees, even though such equipment be furnished or loaned to Construction Manager by District.
- 13.4 The Construction Manager hereby waives any and all claim(s) for recovery from the District under this Agreement, which loss or damage is covered by valid and collectible insurance policies. Construction Manager agrees to have its required insurance policies endorsed to prevent the invalidation of insurance coverages by reason of this waiver. This waiver shall extend to claims paid, or expenses incurred, by Construction Manager's insurance company on behalf of the District.

**ARTICLE 14. Insurance**

- 14.1 Construction Manager shall procure prior to commencement of the work of this Agreement and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Construction Manager, their agents, representatives, employees and sub-consultant(s).
- 14.2 **Minimum Scope and limits of Insurance:** Coverage shall be at least as broad as the following scopes and limits:
  - 14.2.1 **Commercial General Liability.** Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, property damage, death, advertising injury, and medical payments arising from the performance of any portion of the Services. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit.
  - 14.2.2 **Commercial Automobile Liability, Any Auto.** One million dollars (\$1,000,000) per occurrence.
  - 14.2.3 **Workers' Compensation.** Statutory limits required by the State of California.
  - 14.2.4 **Employer's Liability.** One million dollars (\$1,000,000) per accident for bodily injury or disease.
  - 14.2.5 **Professional Liability.** This insurance shall cover the Construction Manager and its sub-consultant(s), if any, for one million dollars (\$1,000,000) aggregate limit

**Comment [RDS4]:** Minimum amounts below are placeholders; District should consult with its Risk Manager or broker to confirm coverage and minimum amounts.

subject to no claim deductible, coverage to continue through completion of construction plus two years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.

- 14.3 The District reserves the right to modify the limits and coverages described herein, with appropriate credits or charges to be negotiated for such changes.
- 14.4 **Deductibles and Self-Insured Retention:** Any deductibles or self-insured retention exceeding Twenty-Five Thousand Dollars (\$25,000) must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers; or the Construction Manager shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 14.5 **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
  - 14.5.1 All policies except for the worker's compensation, employer's liability and professional liability insurance policy shall be written on an occurrence form.
  - 14.5.2 The District, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Construction Manager; instruments of service and completed operations of the Construction Manager; premises owned, occupied or used by the Construction Manager; or automobiles owned, leased, hired or borrowed by the Construction Manager. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.
  - 14.5.3 All endorsements shall waive any right to subrogation against any of the Additional Insureds.
  - 14.5.4 Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.
  - 14.5.5 The Construction Manager's insurance shall apply separately to each insured against whom claim is made

or suit is brought, except with respect to the limits of the insurer's liability.

14.5.6 Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, not renewed, or material change in coverage except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

14.5.7 Construction Manager's insurance coverage shall be primary and non-contributory insurance as respects the Additional Insureds with respect to any claims related to, arising out of, or connected with the Project. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Construction Manager's insurance and shall not contribute with it.

14.6 **Acceptability of Insurers:** Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A:VII.

14.7 **Verification of Coverage:** Construction Manager shall furnish the District with:

14.7.1 Certificates of insurance showing maintenance of the required insurance coverage;

14.7.2 Original endorsements affecting coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before work commences.

#### **ARTICLE 15. Nondiscrimination**

Construction Manager agrees that no discrimination shall be made in the employment of persons under this Agreement because of the fact or perception of that person's race, color, national origin, ancestry, religion, age, physical or mental disability, sex, sexual orientation or perceived sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status of such person. Construction Manager shall comply with any and all applicable regulations and laws governing nondiscrimination in employment.

#### **ARTICLE 16. Covenant Against Contingent Fees**

Construction Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Construction Manager, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Construction Manager, any fee, commission, percentage, brokerage fee, gift, or any other consideration



contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the contract price or consideration or otherwise recover the full amount of such fee, commission, percentage fee, gift, or contingency.

**ARTICLE 17. Entire Agreement/Modification**

This Agreement, including the Exhibits hereto, supersedes all previous contracts and constitutes the entire understanding of the Parties hereto. Construction Manager shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both Parties. Construction Manager specifically acknowledges that in entering into this Agreement, Construction Manager relies solely upon the provisions contained in this Agreement and no others.

**ARTICLE 18. Non-Assignment of Agreement**

In as much as this Agreement is intended to secure the specialized services of the Construction Manager, Construction Manager may not assign, transfer, delegate or sublet any interest therein without the prior written consent of District and any assignment, transfer, delegation or sublease without the District's prior written consent shall be considered null and void.

**ARTICLE 19. Law, Venue**

- 19.1 This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.
- 19.2 San Mateo County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

**ARTICLE 20. Alternative Dispute Resolution**

- 20.1 Notwithstanding any disputes, claims or other disagreements between the Construction Manager and the District, the Construction Manager shall continue to provide and perform Services hereunder pending a subsequent resolution of such disputes.
- 20.2 All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party,

but in no case longer than ninety (90) days after initial written notice.

- 20.3 If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Consultant shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Consultant's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Consultant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

**ARTICLE 21. Tolling of Claims**

Construction Manager agrees to toll all statutes of limitations for District's assertion of claims against Construction Manager that arise out of, pertain to, or relate to Contractors' or subcontractors' claims against District involving Construction Manager's work, until the Contractors' or subcontractors' claims are finally resolved.

**ARTICLE 22. Severability**

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**ARTICLE 23. Employment Status**

- 23.1 Construction Manager shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which the Construction Manager performs the Services which are the subject matter of this Agreement; provided always, however, that the Services to be provided by Construction Manager shall be provided in a manner consistent with all applicable standards and regulations governing such Services.
- 23.2 Construction Manager understands and agrees that the Construction Manager's personnel are not and will not be eligible for: membership in, or to receive any benefits from, any District group plan for hospital, surgical or medical insurance; membership in any District retirement program; paid vacation, paid sick leave or other leave, with or without pay; or any other benefits which accrue to a District employee.

- 23.3 Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Construction Manager or any employee of Construction Manager is an employee of District for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Construction Manager which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 23.4 Should a relevant taxing authority determine a liability for past services performed by Construction Manager for District, upon notification of such fact by District, Construction Manager shall promptly remit the amount due or arrange with District to have the amount due withheld from future payments to Construction Manager under this Agreement (again, offsetting any amounts already paid by Construction Manager which can be applied as a credit against that liability).
- 23.5 A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Construction Manager shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Construction Manager is an employee for any other purpose, then Construction Manager agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Construction Manager was not an employee.
- 23.6 Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

**ARTICLE 24. Warranty of Construction Manager**

- 24.1 Construction Manager warrants that the Construction Manager is properly licensed and/or certified under the laws and regulations of the State of California to provide all the services that it has herein agreed to perform. Construction Manager further warrants that all of the work performed under this Agreement by the Construction Manager shall comply with all applicable laws, rules, regulations and codes of the United States and the State of California. The Construction Manager also warrants that it shall comply with all applicable ordinances, regulations, and resolutions of San Mateo County.

- 24.2 Construction Manager certifies that it is aware of the provisions of the Labor Code of the State of California, that require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that, if applicable, it will comply with those provisions before commencing the performance of the work of this Agreement.
- 24.3 Construction Manager certifies that it is aware of the provisions of California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). To the extent that work is performed as part of an applicable "public works" or "maintenance" project, where the total compensation is \$1,000 or more, the Construction Manager agrees to fully comply with and to require its sub-consultant(s) to fully comply with all applicable prevailing wage requirements of the California Labor Code. To the extent that the work performed under this contract is subject to labor compliance and enforcement by the DIR, Construction Manager specifically acknowledges and understands that it shall perform the Services while complying with all applicable provisions of Division 2, Part 7, Chapter 1 of the Labor Code and Title 8 of the California Code of Regulations.

**ARTICLE 25. Cost Disclosure - Documents and Written Reports**

Construction Manager shall be responsible for compliance with California Government Code section 7550, if the total cost of the Agreement is over five thousand dollars (\$5,000).

**ARTICLE 26. Communications / Notice**

Notices and communications between the Parties to this Agreement may be sent to the following addresses by registered or certified mail with postage prepaid, return receipt requested, by overnight delivery service, or by personal delivery:

**District:**

San Bruno Park School District  
 500 Acacia Ave  
 San Bruno, CA 94066  
 ATTN: Wendy Richard  
 FAX: 650-266-9626

**Construction Manager:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 ATTN: \_\_\_\_\_  
 FAX: \_\_\_\_\_

If notice is given by registered or certified mail with postage prepaid, return receipt requested, it shall be considered delivered on the day the notice is signed for. If notice is given by overnight delivery service, it shall be considered delivered on the date stated in the proof of delivery.

The Construction Manager and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

**ARTICLE 27. Disabled Veteran Business Enterprise Participation**

Pursuant to section 17076.11 of the Education Code, the District has a participation goal for disabled veteran business enterprises ("DVBE") of at least three percent (3%), per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the "Act"). This Project may use funds allocated under the Act. Therefore, Construction Manager, before it executes the Agreement, shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount(s) intended to be paid to DVBEs in conjunction with the contract, and/or documentation demonstrating Construction Manager's good faith efforts to meet these goals.

**Comment [RDS5]:** If not applicable, delete (e.g., if not using state bond funds, or not seeking reimbursement for project from state bond funds).

**ARTICLE 28. Other Provisions**

- 28.1 The Construction Manager shall be responsible for the cost of construction change orders caused directly by the Construction Manager's willful misconduct or negligent acts, errors or omissions. Without limiting Construction Manager's liability for indirect or consequential cost impacts, the direct costs for which the Construction Manager shall be liable shall equal its proportionate share of the difference between the cost of the change order and the reasonable cost of the work had such work been a part of the originally prepared construction documents.
- 28.2 Neither the District's review, approval of, nor payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Construction Manager shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Construction Manager's failure to perform any of the services furnished under this Agreement to the standard of care of the Construction Manager for its Services, which shall be, at a minimum, the standard of care of construction managers performing similar work for California public school districts at or around the same time and in or around the same geographic area of the District.
- 28.3 Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.

- 28.4 The individual executing this Agreement on behalf of Construction Manager warrants and represents that she/he is authorized to execute this Agreement and bind the Construction Manager to all terms hereof.
- 28.5 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one Agreement binding all the Parties hereto.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.

**SAN BRUNO PARK SCHOOL DISTRICT** \_\_\_\_\_

Date: \_\_\_\_\_, 2019

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

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

Date: \_\_\_\_\_, 2019

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

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