

AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

OXNARD UNION HIGH SCHOOL DISTRICT

WITH

FOR

DEL SOL HIGH SCHOOL

NEW CONSTRUCTION

RFQ# 1430011220

_____, 2020

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AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

This Agreement for Construction Management Services ("Agreement") is made as of [REDACTED], 2020, between the Oxnard Union High School District, a California public school district ("District"), and [REDACTED] ("Construction Manager") (both collectively "Parties"), for the following project ("Project"):

The construction administration of the Oxnard Union High School District new Del Sol High School and the northeast intersection of Rose Avenue and Camino Del Sol in Oxnard, California

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-Built"):** 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. The term Design Team includes the Design Professional in General Responsible Charge on this Project.
- 1.1.13 **DIR:** California Department of Industrial Relations.
- 1.1.14 **District:** The Oxnard Union High School District.
- 1.1.15 **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 Poul Hanson, Bond Project Manager (poul.hanson@oxnardunion.org). District may

change the District's Representative by notice as set forth herein.

- 1.1.16 **DSA:** Division of the State Architect in the California Department of General Services.
- 1.1.17 **Extra Services:** District-authorized Services outside of the scope in **Exhibit "A"** or District-authorized reimbursables not included in Construction Manager's fee.
- 1.1.18 **Fee:** The Construction Manager's Fee is defined in Section 6.1, payable as set forth in Article 6 and in **Exhibit "D."**
- 1.1.19 **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 (PI):** The agent of the DSA at the project site whose primary responsibility will be to ensure 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 PI will report to both the DSA and the Architect.
- 1.1.21 **Record Drawings:** A final set of drawings prepared by the Architect incorporating 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 **Standard of Care:** Construction Manager, its officers, agents, employees, subcontractors, Consultants and any persons or entities for whom Construction Manager is responsible, shall provide all Services pursuant to this Agreement in accordance with the requirements of this Agreement and in a manner consistent with the standard of care under California law applicable to those who specialize in providing the same services for projects of the type, scope, and complexity of the Project. The District's review,

approval of, or payment for any of the Services required under this Agreement shall not be construed as assent that Construction Manager has complied, nor in any way relieve the Construction Manager of compliance, with (i) the applicable standard of care, or (ii) applicable statutes, regulations, rules, guidelines and requirements.

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

ARTICLE 3. Construction Manager Staff

3.1 The District selected Construction Manager to perform the Services because of the Construction Manager's skills and expertise of key personnel.

3.2 The Construction Manager agrees that the following key personnel in Construction Manager's firm shall be associated with the Project and perform the Services in the following capacities:

Principal In Charge: _____

Project Director: _____

Construction Manager: _____

Project Manager: _____

Asst. Construction Manager: _____

Asst. Project Manager: _____

Other: _____

Other: _____

Other: _____

3.3 The Construction Manager shall not change any of the key personnel listed above without the District's prior written approval, 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 retains the right to approve replacement personnel.

3.4 If any designated lead or key person fails to perform to the satisfaction of the District, then upon the District's written notice, the Construction Manager will have seven (7) calendar days to remove that person from the Project and shall provide a replacement person acceptable to the District.

3.4.1 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, that could conflict in any manner or degree with the performance of Services required under this Agreement. Construction Manager agrees further that no person having any such interest shall be employed by Construction Manager.

ARTICLE 4. Schedule of Work

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"** so as to proceed with and complete the Services in compliance 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. Delays beyond the Construction Manager's reasonable control will not be a material breach.

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 Project elements the Design Team designs or specifies.
- 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 Project's construction cost as designed by the Project Design Team will not exceed the Construction Cost Budget, as may be adjusted subsequently with the District's written approval. Construction Manager shall notify the District if it believes the Project's construction cost of the work by the Project Design Team will exceed the Construction Cost Budget, and/or if it believes the construction cost as designed will exceed the Construction Cost Budget. 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 Construction Manager's preliminary and detailed cost estimates, 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 of the plans and specifications, 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 and/or re-bid the Project, when appropriate, within three (3)

months' time of receipt of bids, at no additional cost to the District (exclusive of District and other agencies' review time).

- 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. Construction Manager will perform 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 The combined total of base bid and all additive alternates equal or exceed ten percent (10%) of the Construction Cost Budget; or
 - 5.7.3 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 Bay Area, 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(s) or omission(s).

- 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."**

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 of the District's prior written authorization of the claimed Extra Services and the Extra Services have been satisfactorily completed.
- 7.2 Construction Manager shall submit to District a written proposal describing the proposed scope of services and listing the personnel, labor duration, rates, and cost. Construction Manager shall proceed with Extra Services only upon receiving the District's prior written authorization. Construction Manager will not be entitled to any compensation for Extra Services performed prior to receiving District's written authorization.
- 7.3 If Construction Manager performs any Extra Services without the District's authorized representative's prior written authorization, the District will not be obligated to pay for such Extra Services. The foregoing provision notwithstanding, Construction Manager will be paid by the District as described in **Exhibit "B"** for Extra Services the District's authorized representative verbally requests, provided Construction Manager confirms such request in writing pursuant to the notice requirements of this Agreement, and proceeds with such Extra Services not earlier than two (2) business days after the District receives Construction Manager's written confirmation of the request.

ARTICLE 8. Ownership of Data

- 8.1 All of Construction Manager's work product prepared or generated in connection with this Agreement is the District's property.
- 8.2 Upon the District's request, 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 Project completion or, if the District exercises the right to terminate this Agreement pursuant to the Agreement terms, Construction Manager shall assemble and deliver to District within five (5) calendar days of the District's written request, all of Construction Manager's work product of the generated, prepared, reviewed or compiled in connection with this Agreement and the Services and authorized Extra Services hereunder. This includes, without limitation, all Construction Manager generated documents,

copies of all documents Construction Manager exchanged with or copied to or from all other Project participants, and all closeout documents. Construction Manager shall be index and organize appropriately said Project records for easy use by District personnel.

- 8.4 All Project records are District property, 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. Notwithstanding the preceding sentence, Construction Manager and its Consultants shall be entitled to reuse work product generated under this Agreement.

ARTICLE 9. Termination of Contract

- 9.1 District's Request for Assurances: If District at any time reasonably believes Construction Manager is or may be in default under this Agreement, District may in its sole discretion notify Construction Manager of this fact and request written assurances from Construction Manager of performance of Services and a written plan from Construction Manager to remedy any potential default under the terms this Agreement that the District may advise Construction Manager of in writing. Construction Manager shall, within ten (10) calendar days of District's request, deliver a written cure plan that meets the District's requirements in its request for assurances. Construction Manager's failure to provide such written assurances of performance and the required written plan, within ten (10) calendar days of request, will constitute a material breach of this Agreement sufficient to justify termination for cause.
- 9.2 District's Termination of Construction Manager for Cause: If Construction Manager fails to perform Construction Manager's duties to the District's satisfaction, 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 violates 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 Construction Manager written notice thereof. 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.
- 9.3 District's Termination of Construction Manager for Convenience: District shall have the right in its sole discretion to terminate this 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.

- 9.4 Construction Manager's Termination of Agreement for Cause: 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.
- 9.5 Effect on Pre-Termination Services: 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.
- 9.6 Ceasing Services upon Termination: If, at any time in the progress of the Project, the District determines that the Project should be terminated, the Construction Manager, upon the District's written notice of such termination, shall immediately cease work on the Project. The District shall pay 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.
- 9.7 Project Suspension: 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 with counsel approved by District where such approval is not to be unreasonably withheld.

- 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), or to enforce the indemnity herein. Construction Manager's obligation to indemnify shall not be restricted to insurance proceeds.
- 10.3 District may withhold from amounts owing to Construction Manager any and all costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the 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 Pursuant to Education Code section 45125.2, the District has determined on the basis of the scope of Services in this Agreement that Construction Manager and its subcontractors and employees will have only limited contact with pupils. Construction Manager will promptly notify the District in writing of any facts or circumstances which might reasonably lead the District to determine that contact will be more than limited as defined by Education Code section 45125.1(d).
- 11.4 Construction Manager shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. 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. Construction Manager's

responsibility shall extend to all employees, agents, and employees or agents of its Consultants regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as Construction Manager's independent contractors. Construction Manager shall provide to District verification of compliance with this section and the Criminal Background Investigation Certification (**Exhibit "E"**) in writing prior to each individual commencing employment or participating 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 Project requirements.
- 12.3 The District shall retain design professional(s) whose services, duties and responsibilities will 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 Team'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 Project representative 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 as 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 Construction Manager shall pay to District 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 of its Services.
- 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 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 the District's behalf.

ARTICLE 14. Insurance

- 14.1 Construction Manager shall procure, prior to commencement of Services, and will 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). Construction Manager's liabilities, including but not limited to, Construction Manager's indemnity or defense obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Construction Manager's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated by the District, subject to its sole discretion, as a material breach of contract.
- 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. For all of the Construction Manager's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Construction Manager shall keep in full force and effect, a Workers' Compensation policy. Construction Manager shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
- 14.2.4 **Employer's Liability.** One million dollars (\$1,000,000) per accident for bodily injury or disease. For all of the Construction Manager's employees who are subject to this Agreement, Construction Manager shall keep in full force and effect, an Employment Practices Liability policy. That policy shall provide employers' liability coverage with minimum liability coverage of Two million dollars (\$2,000,000) per occurrence. Construction Manager shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
- 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 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:
 - 14.4.1 The District can accept the higher deductible;
 - 14.4.2 Construction Manager's insurer shall reduce or eliminate such deductibles or self-insured retention as respects

the District, its officers, officials, employees and volunteers; or

- 14.4.3 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. All endorsements shall waive any right to subrogation against any of the Additional Insureds.
- 14.5.3 Construction Manager shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If Construction Manager fails to maintain insurance, District may take out comparable insurance, and deduct and retain amount of premium from any sums due Architect under the Agreement.
- 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.
- 14.5.8 Construction Manager shall require all subconsultants to maintain the level of insurance Construction Manager deems appropriate with respect to the subconsultant's scope of the Work unless otherwise indicated in the Agreement. Construction Manager shall cause the subconsultants to furnish proof thereof to District within ten (10) Days of District's request. Should Construction Manager not require subconsultants to provide the same level of insurance as is required of Architect, as provided in this Agreement, Construction Manager is not relieved of its indemnity obligations to District or fulfilling its insurance requirements as provided in this Agreement.
- 14.5.9 If Construction Manager normally carries insurance in an amount greater than the minimum amounts required herein, that greater amount shall become the minimum required amount of insurance for purposes of the Agreement. Therefore, Construction Manager hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Agreement.
- 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. Construction Manager shall inform the District in writing if any of its insurer(s) have an A.M. Best's rating less than A:VII. At the option of the District, the District may either:
 - 14.6.1 Accept the lower rating; or
 - 14.6.2 Require Architect to procure insurance from another insurer.
- 14.7 **Verification of Coverage:** Prior to commencing with its provision of Services under this Agreement, but no later than three (3) calendar after the Notice of Award, 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.

- 14.8 Copy of Insurance Policy(ies): Upon the District's request, Construction Manager will furnish District with a copy of all insurance policies related to its provision of Services under this Agreement.

ARTICLE 15. Nondiscrimination

Construction Manager agrees to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246; and all administrative rules and regulations found to be applicable to Consultant and all of its subcontractors. In addition, Consultant agrees to require like compliance by all of its subcontractor(s).

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 benefit other 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

This Agreement is intended to secure the Construction Manager's specialized services. Construction Manager may not assign, transfer, delegate or sublet any interest therein without the District's prior written consent. 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 To the fullest extent permitted by California law, Ventura 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 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.
- 20.2 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.
- 20.3 Notwithstanding any disputes, claims or other disagreements between the Construction Manager and the District, Construction Manager shall continue to provide and perform Services hereunder pending a subsequent resolution of such disputes.

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 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 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 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 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 Construction Manager is properly licensed and/or certified under the laws and regulations of the State of California to provide the Services that it has herein agreed to perform. Construction Manager further warrants that all of the work Construction Manager performs under this Agreement shall comply with all applicable laws, rules, regulations and codes of the United States and the State of California. 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 California Labor Code of the State of California, requiring 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 and California Code of Regulations 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, Construction Manager agrees to fully comply with and to require its Consultant(s) to fully comply with all requirements of the Prevailing Wage Laws.

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:

Oxnard Union High School District
309 S. "K" Street
Oxnard, CA 93030
ATTN: Poul Hanson,
Bond Project Manager
EMAIL: poul.hanson
@oxnardunion.org

Construction Manager:

ATTN: _____
EMAIL: _____

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.

ARTICLE 28. District's Right to Audit

28.1 District retains the right to review and audit, and the reasonable right of access to Construction Manager's and any Consultant's premises to review and audit the Construction Manager's compliance with the provisions of this Agreement ("District's Right"). The District's Right includes the right to inspect, photocopy, and to retain copies, outside of Construction Manager's premises, of any and all Project-related records and other information with appropriate safeguards, if such retention is deemed necessary by the District in

its sole discretion. The District shall keep this information confidential, as allowed by applicable law.

- 28.2 The District's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the District determines is necessary to discover and verify whether Architect is in compliance with all requirements of this Agreement.
- 28.3 If there is a claim for additional compensation or for Extra Services, the District's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the District determines is necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.
- 28.4 Construction Manager shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. Construction Manager shall make available to the District for review and audit all Project-related accounting records and documents and any other financial data. Upon District's request, Construction Manager shall submit exact duplicates of originals of all requested records to the District.
- 28.5 Construction Manager shall include audit provisions in any and all of its subcontracts, and shall ensure that these sections are binding upon all Consultants.
- 28.6 Construction Manager shall comply with these provisions within fifteen (15) days of the District's written request to review and audit any or all of Construction Manager's Project-related records and information.

ARTICLE 29. Other Provisions

- 29.1 Construction Manager shall be responsible for the cost of construction change orders caused directly by 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 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. These amounts shall be paid by Construction Manager to District or the District may withhold those costs from amounts due or to become due to Construction Manager.
- 29.2 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.

- 29.3 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.
- 29.4 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.
- 29.1 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.

ARTICLE 30. Exhibits.

Exhibits "A" through "E" attached hereto are hereby incorporated by this reference and made a part of this Agreement.

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

**OXNARD UNION HIGH SCHOOL
DISTRICT**

Date: _____, 2020

By: _____

Title: _____

Date: _____, 2020

By: _____

Title: _____