

**SANTA CLARA UNIFIED SCHOOL DISTRICT**

**AGREEMENT FOR  
CONSTRUCTION MANAGEMENT SERVICES**

**April 28, 2016**

**Amended: September 12, 2017**

# AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

## RECITALS

This Agreement for Construction Management Services ("Agreement") is entered into this **April 28, 2016**, by and between **SANTA CLARA UNIFIED SCHOOL DISTRICT**, a California Public School District ("District") and **Strawn Construction Management & Development, Inc.** ("CM")

**WHEREAS**, this Agreement is amended on September 12, 2017 to include the scope of work identified in Exhibit "C" for the Contract Price listed in Exhibit "A",

**WHEREAS**, this Agreement is amended on August 24, 2017 to include the scope of work identified in Exhibit "C" for the Contract Price listed in Exhibit "A",

**WHEREAS**, the District is the owner of the real property commonly described as **Santa Clara Unified School District properties**, ("Site"), and

**WHEREAS**, the District has identified projects for construction of works of improvement generally described as the **Bond Program Projects** ("Project") more specifically described in Exhibit C ("Scope of Work"):

**WHEREAS**, the District desires to retain CM to provide planning and construction management and support services along with related work product in connection with the Project as described herein; and

**WHEREAS**, CM is a professional construction manager, qualified and capable of providing the services and work product contemplated herein, in accordance with the terms hereof;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the District and CM agree as follows:

## AGREEMENT

**Article 1 Basic Services:** CM shall provide Basic Services consisting generally of construction management and planning services along with related or required work product to meet the District's Project objectives, including completion of Project construction within the Project Budget and time.

**Article 2 CM Compensation:**

**2.1 Contract Price:** The District shall pay a Contract Price not to exceed **\$86,372.00** ("the Contract Price") as reflected in Exhibit A ("CM Fee Development Matrix"). The Contract Price is inclusive of fees for the CM and any Sub-Consultant to CM, the personnel expenses of CM and any Sub-Consultant to CM including all benefits and burdens, insurance, travel and travel related expenses of the CM and any sub-consultant to CM (relating to or arising out of performance of the Basic Services) and all other costs and expenses of any kind, type or nature associated with or arising out of CM's performance of the Basic Services, except for Reimbursable Expense items set forth in this agreement. At the end of contract term, CM will review total actual hours expended as well as reimbursables spent, and provide a statement accordingly to the District. All savings recognized as the direct result of total unused hours and/or reimbursables will be credited back to the District and reflected as such in the final payment.

**2.2 Reimbursable Expenses:** In addition to the Contract Price, the District will pay to the CM the actual costs of Reimbursable Expenses incurred in performance of Basic Services or authorized Additional Services. Reimbursable Expenses are limited to items of a non-capital nature reasonably necessary to complete the Basic Services or authorized Additional Services; items in the nature of general transactions, taxes, etc. are not Reimbursable Expenses. Reimbursable items include ~~vehicle expenses related~~

~~to this project, telephone and communications charges,~~ miscellaneous office supplies and general conditions costs for items not provided by the District. Billings for payment of Reimbursable Expenses shall be actual cost of the Reimbursable Expense item plus a mark-up of **5%**, provided that if the actual cost of any Reimbursable Expense item is Five Hundred Dollars (\$500) or more, payment will not be made by the District unless the District approves of such Reimbursable Expense item in advance. The estimated cost of Reimbursable Expenses (inclusive of the CM's mark-up) is **\$2,500.00**. If any Reimbursable Expense is paid by the District for an item of personal property which is not used or consumed in the performance of Basic Services, it shall be deemed to be property of the District upon termination of this Agreement. The CM shall make arrangements to transfer physical possession of such items to the District and shall cooperate with the District in preparing, executing or filing instruments necessary or appropriate to transfer title of such items to the District.

**2.3 Additional Services:** If the District shall approve or direct CM to perform or provide Additional Services described generally in Article 3 of the Conditions to this Agreement, CM shall be compensated for its personnel providing such Additional Services in accordance with the rates listed in Exhibit A (CM Fee Development Matrix) attached hereto and incorporated herein by this reference.

**2.4 District Payments:**

**2.4.1 Allocation of Contract Price:** CM and District agree that for the purposes of the District's payment of the Contract Price, the Contract Price shall be allocated as follows:

**2.4.2 CM Billings to District:** During the course of providing Basic Services, CM shall submit monthly billing invoices to the District for payment of the Contract Price for Basic Services and authorized Additional Services performed in the immediately prior month. Billings shall be based on hours for services performed by project team positions listed in Exhibit A (CM Fee Development Matrix). Billings for Reimbursable Expenses shall be accompanied by invoices or other evidence of the actual cost of each item for which Reimbursable Expense payment is requested.

**2.4.3 District Payments to CM:** Within thirty (30) days of receipt of CM's billing invoices, District will make payment to CM of undisputed amounts due for Basic Services and authorized Additional Services. No deductions shall be made or withheld from payments due CM hereunder on account of any penalty, assessment, liquidated damages or other amounts withheld by the District from payment to the Architect or any Trade Contractors. The District may, however, withhold or deduct from amounts otherwise due CM hereunder if CM shall fail to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after CM has fully cured its failure of performance, less costs, damages or losses sustained by the District as a result of such failure of performance of a material obligation hereunder.

**Article 3 Term:** The Term of this Agreement shall commence upon execution and delivery of executed counterpart copies hereof to the other Party. This Agreement shall terminate on **May 31, 2018** ("the Termination Date"). In the event that the Project is not completed or the District does not issue Final Payment to all Trade Contractors as of the Termination Date through no fault or neglect of CM, the Termination Date shall be extended. In such event, Basic Services provided by CM following the Termination Date shall be in accordance with the Rate Schedule attached hereto as Exhibit "B".

**Article 4 Insurance:** Coverage amounts and limits for policies of insurance to be obtained and maintained by CM pursuant to Article 4 of the Conditions to this Agreement are:

Workers Compensation:	In accordance with applicable law
Employers Liability	\$1,000,000

Commercial General Liability (Including coverage for death, bodily injury, property damage and motor vehicle liability)	
Per Occurrence	\$1,000,000
Aggregate	\$2,000,000
Professional Liability	
Per Occurrence	\$1,000,000
Aggregate	\$1,000,000

**Article 5 Miscellaneous:**

- 5.1 Governing Law; Interpretation:** This Agreement shall be governed and interpreted in accordance with the laws of the State of California in accordance with its fair meaning and not strictly for or against the District or CM.
- 5.2 Successors; Non-Assignment:** This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors of CM and the District. Neither CM nor District shall assign rights or obligations hereunder without the prior consent of the other, which consent may be withheld or granted in sole discretion of the Party requested to grant such consent.
- 5.3 Authority:** The individual(s) executing this Agreement on behalf of CM warrant and represent that she/he is authorized to execute this Agreement and bind CM to all terms hereof. The individual(s) executing this Agreement on behalf of District warrant and represent that she/he is authorized to execute this Agreement and subject to approval and ratification by the District's Board of Trustees, to bind District to all terms hereof and authority granted to enter into this Agreement.
- 5.4 Notices:** Notices under this Agreement shall be addressed and delivered as follows:
- If to District:  
Mark Allgire, Chief Business Official  
Santa Clara Unified School District  
1889 Lawrence Road  
Santa Clara, California 95051
- If to CM:  
Randy Strawn  
Strawn Construction Management & Development, Inc.  
1140 Pedro Street, Suite No. 1  
San Jose, CA 95126
- 5.5 Entire Agreement:** This Agreement, the accompanying Conditions and the documents enumerated below, if any, are all of the documents forming a part of the Agreement:

- EXHIBIT A      CM Fee Development Matrix
- EXHIBIT B      Rate Schedule
- EXHIBIT C      Scope of Work

The foregoing constitute the entire agreement and understanding between the District and CM concerning the subject matter hereof, replacing and superseding all prior agreements or negotiations, whether written or verbal. No term or condition of this Agreement shall be modified or amended except by writing executed by the District and CM.

IN WITNESS WHEREOF, the District and CM have executed this Agreement as of the date set forth above.

"CM"

Strawn Construction Management & Development, Inc.  
1140 Pedro Street, Suite No. 1  
San Jose, CA 95126

"DISTRICT"

Santa Clara Unified School District,  
a California Public School District  
1889 Lawrence Road  
Santa Clara, CA 95051

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

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

Mark Allgire, Chief Business Official

# CONDITIONS OF AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

## Article 1 Relationship of Parties:

- 1.1 Relationship of CM to Other Project Participants:** CM's services shall be provided in conjunction with contract(s) between the District and the Architect and between the District and Trade Contractors. The Architect is responsible for the adequacy and sufficiency of the Project design and the content of Design Documents for the Project. The Architect shall perform its duties in accordance with its contract(s) with the District. Except as expressly set forth herein, neither this Agreement, nor CM's rendition of services hereunder shall be deemed CM's assumption of responsibility for: (a) the adequacy or sufficiency of the Project design or the Design Documents for the Project, which are and remain that of the Architect; or (b) construction means, methods or sequences or safety at the Site, all of which are and remain the responsibility of the Trade Contractors.
- 1.2 CM Independent Contractor Status. CM as Agent of District:** In providing services hereunder, CM shall be an independent contractor to the District. The express terms hereof set forth the limited extent to which CM is authorized to act as an agent on behalf of the District. CM shall be responsible to the District and third parties for the consequences of CM's actions or conduct as an ostensible agent of the District that exceeds the express limited scope of CM's agency authority set forth herein.
- 1.3 District Responsibilities;**
- 1.3.1 Information.** The District shall provide full information regarding the Project, including the District's objectives, schedule requirements and other constraints and requirements, which may affect the Project Budget, time for Project completion or Project scope.
- 1.3.2 District Representative.** The District shall designate a representative to act on the District's behalf with respect to the Project and who shall be authorized to render decisions on behalf of the District and to carry out the District's responsibilities under this Agreement, all of which shall be discharged or performed in a manner so as to avoid unreasonable delay in the orderly and sequential progress of the Project construction and CM's services hereunder.
- 1.3.3 Construction Tests, Approvals and Inspections:** The District shall furnish or contract for and pay the costs of all tests, approvals or inspections required by law or other deemed necessary or appropriate in connection with construction of the Project or portions thereof.
- 1.3.4 District Consultants:** The District shall furnish all legal, accounting, insurance and other consulting services as may be necessary for the Project.
- 1.4 CM Standard of Care; Qualifications:** CM shall provide the Basic Services and authorized Additional Services using its best professional skill and judgment, acting with due care and in accordance with professional standards of care, the terms of this Agreement and applicable law, code, rule or regulation. CM's services hereunder shall be provided promptly and in such a manner as to avoid hindrance, interruption or delay to the orderly progress and completion of Project design and construction. All of CM's services hereunder shall be performed by, or under the direction and control of a California licensed architect or general contractor or a California registered engineer.

## Article 2 Basic Services:

- 2.1 Basic Services:** CM will establish a construction management organization appropriately staffed to perform the Basic Services. CM's personnel and the specific roles, authority and responsibility of the CM's personnel are subject to the reasonable approval of the District. The CM shall designate a Project Manager who shall be reasonably satisfactory to the District and who shall have the overall responsibility for performance of CM's obligations hereunder and be authorized to act on behalf of the

CM in discharge of CM's services hereunder. Staff assigned to these projects will utilize the District's project management information system, Autodesk Constructware, and will be expected to follow the District's project management processes. The District will provide software licensing, training and support.

**2.2 Pre-construction Phase Services:** Pre-Construction Services consist of the following:

**2.2.1 Project Management and Planning:**

**2.2.1.1 Review of Project Requirements and Constraints:** In conjunction with the District and the Architect, generally review, comment and make recommendations as to the Project requirements and constraints, including design criteria, construction techniques, time and budget.

**2.2.1.2 Project Construction Management Plan:** The CM shall prepare a Project Construction Management Plan for submittal to the District Representative for review and acceptance. The Project Construction Management Plan which establishes critical milestone events and dates for achieving milestone events as well as generally setting forth the manner and method for completing the Bidding and Construction Phases of the Project, taking into account the Project Budget and the time established by the District for completion of the Project. In conjunction with the District, the CM shall identify and develop alternatives for sequencing, management or planning of Project construction for the most efficient and economic means of achieving the District's Project objectives.

**2.2.1.3 Project Controls:** Develop and implement Project management controls, including planning, scheduling, communications, budgeting, progress reporting and problem identification, tracking and resolution.

**2.2.1.4 Constructability Review:** The CM shall conduct a constructability review of the Design Documents to determine conformity with the general scope of Work identified by the District, the District's construction standards and design guidelines, the Architect's professional standard of care, and for clarity, consistency and coordination of the various components of the Design Documents.

**2.2.1.5 Constructability Recommendations:** CM shall maintain a written log or other documentation of comments, recommendations or other notations generated in the course of its constructability review, and all such materials shall be available to the District for review or reproduction upon the District's reasonable request. Upon completion of its constructability review, CM shall provide the District with a comprehensive final report of its review, findings and recommendations. In consultation with the District, a determination will be made by the CM for the items reflected in its final constructability report, which are to be incorporated into the Design Documents. CM will thereafter monitor the Architect's revisions of the Design Documents for the purpose of ensuring that constructability review comments and recommendations are accurately and completely incorporated into the Design Documents.

**2.2.1.6 Limitations Upon Constructability Review:** The constructability review conducted by CM hereunder is distinguished from the actions, responsibilities and work product of the Architect; CM's constructability review and the comments or recommendations resulting therefrom are advisory to the District and the Architect. The CM's constructability review shall, however, represent CM's best professional judgment that the Design Documents meet the scope of Work, design and construction guidelines established by the District for the Project or by applicable, law, code, regulation or ordinance and are suitable for bidding and construction. Subject to the foregoing limitations, by performing the constructability review and its comments or recommendations

resulting therefrom, CM shall not be deemed to have assumed responsibility for the Project design or the contents of the Design Documents.

**2.2.1.7 Value Analysis:** CM shall provide value analysis of the Design Documents and the proposed materials, equipment, systems and other items depicted therein to evaluate and make recommendations to the District for alternatives, deletions or amendments which pertain to anticipated construction costs, useful life, maintenance and operational costs or efficiency of operations. CM shall provide the District with written value analysis recommendations, cost/benefit analyses of value engineering recommendations and in consultation with the District, determine the extent to which the CM's value analysis recommendations are to be incorporated into the Design Documents. Where value analysis recommendations are to be incorporated into the Design Documents, CM shall monitor the Architect's incorporation of such recommendations to ensure that they are completely and accurately incorporated into the Design Documents. Value analysis recommendations shall represent CM's best professional judgment that the form, fit and function of various items and components now depicted in the Design Documents are not materially affected by such recommendations and that the District will be benefited by incorporation of such recommendations by reduced construction costs, reduced operational costs or maintenance costs and/or extended useful life.

**2.2.1.8 Review of Project Budget and Architect's Construction Cost Estimate:** CM shall generally review the Project Budget and the Construction Cost Estimate prepared by or on behalf of the Architect. If in such review, the CM determines that a material variation exists between the Project Budget and the Construction Cost Estimate, the CM shall make recommendations to the District and Architect for modification of the Project scope, Project Budget and/or Construction Cost Estimate so that material variations between the Project Budget and Construction Cost Estimate are minimized or eliminated.

## **2.2.2 Bidding Phase:**

**2.2.2.1 Development of Bid Packages:** In consultation with the District, CM will advise and make recommendations to the District for:

- a. Division of the Project for construction within each School Site and among the Sites.
- b. Division of the Project into individual separate portions for the purpose of bidding and awarding Trade Contracts between the District and separate Trade Contractors to the District for construction of such designated portions of the Project;
- c. Make sufficient and appropriate assignments amongst the Trade Contractors for the Project for each Phase so that all requirements of the Project are met; and
- d. Develop procedures to minimize jurisdictional disputes amongst the Trade Contractors during construction of each Phase of the Project.

**2.2.2.2 Development and Issuance of Contract and Bid Documents:** Based upon the Design Documents developed and prepared by the Architect, CM will assist and make recommendations to the District for development, preparation and issuance of Contract Documents for Trade Contracts and Bid Documents for bidding Trade Contracts for Project construction. CM will assist in the preparation of General Conditions and other supplementary conditions as necessary for Trade Contracts and review applicable portions of the Design Documents, including Specifications for content, consistency and coordination. CM will assist the District in complying with applicable legal requirements for the advertisement and solicitation of Bid Proposals from Trade Contractors.



**2.2.2.3 Bidding Process:** During the bidding of Trade Contracts, CM will:

- a. Conduct one or more pre-bid conference(s), as necessary with the bidders and record, prepare and distribute minutes thereof.
- b. Respond, on behalf of the District, to bidders' inquiries, questions or clarifications relating to the bidding, the Project or the Design Documents, with responses being based upon information provided by the District and/or the Architect and in consultation with the District; where necessary or appropriate, CM will assist the District and the Architect in the development and issuance of addenda to the Contract Documents, Bid Documents and/or Design Documents for the Trade Contracts.
- c. Assist the District in the receipt and review of Trade Contractors' Bid Proposals, including the review of bids for responsiveness and bidder responsibility, preparation bid summary analyses and recommendations for the selection of Trade Contractors and the award of Trade Contract. Assist the District in obtaining approval for award of Trade Contracts.

**2.3 Construction Phase Services:**

**2.3.1 Administration and Coordination of Trade Contracts and Construction:** CM will provide administrative, management and related services necessary to generally administer the Trade Contracts and to coordinate the Work of the Trade Contractors during the Construction Phase of the Project including:

- a. Receive, review and forward to the District and the Architect the Trade Contractors' Certificates of Insurance and Bonds along with commentary as to the extent to which such Certificates of Insurance and Bonds comply with the applicable terms Contract Documents for the Trade Contracts;
- b. Advice and recommendations to the District for issuance of Notices(s) to Proceed for Trade Contracts;
- c. Scheduling, coordinating and conducting pre-construction and construction meetings; recording, maintaining and distributing minutes thereof;
- d. Generally coordinate the sequence and schedule for Trade Contractors' work, including the allocation space in areas where Trade Contractors are performing construction activities;
- e. In consultation with the Architect, develop and implement procedures for the submittal and processing of Submittals required by any of the Trade Contracts. CM will review Trade Contractors' Submittals and coordinate the same for transmittal to the Architect for review and approval;
- f. In consultation with the District and the Architect, develop and implement procedures for the handling and disposition of Contractors' requests for information or clarifications;
- g. Establish and implement procedures for the transmittal and receipt of communications, drawings and other information between CM, Architect and Trade Contractors relating to Project construction; and
- h. Assist the District in selection and retention of testing laboratories and inspection services for Project construction.

**2.3.2 Monitoring of Construction Costs; Trade Contractors' Applications for Payment:**

**2.3.2.1 Construction Costs:** CM will monitor the Construction Costs and advise the District of the financial condition of the Project by:

- a. Development of Project cash flow reports, forecasts and other financial reports to the District, including those reflecting variations between actual Construction Costs and the Project Budget and estimated costs of unperformed Project activities;
- b. Maintaining records reflecting the actual costs for activities completed or in progress, including records relating to work performed on a unit cost basis and additional work performed by any Trade Contractor on a time and materials basis;
- c. Monitor and advise the District of costs pertaining to potential, pending and completed changes to Trade Contracts; and
- d. Advising and making recommendations to the District for adjustments to the Project Budget relative to actual or anticipated Construction Costs.

**2.3.2.2 Applications for Progress Payments:** CM will participate in the review and disbursement of Progress Payments to Trade Contractors and in consultation with the District and the Architect, make recommendations for the disbursement of Progress Payments to Trade Contractors as follows:

- a. CM will assist in the development of procedures for submittal, review, processing and disbursement of Progress Payments to Trade Contractors on the Project, along with associated forms and reporting systems.
- b. Based upon CM's observations and evaluations of each Trade Contractors' Application for Progress Payment, CM will review and certify to the District the amount due on each such Application for Progress Payment; CM's certifications constitute a representation to the District that, based on CM's observations at the Site, the data in each Trade Contractors' Application for Progress Payment, and to the best of CM's knowledge, information and belief, the Work has progressed to the point indicated in the Application for Progress Payment and the quality of the Work is in generally in accordance with the Contract Documents for that Trade Contract.
- c. CM's representations relative to Applications for Progress Payment are subject to an evaluation of the Work for conformity with the Contract Documents for the Trade Contract upon Substantial Completion, results of subsequent tests and procedures, minor deviations from the Contract Documents correctable prior to completion and any specific qualifications expressed by CM in its certification. CM's issuance of a Certificate pursuant to the preceding shall be a representation that the Trade Contractor is entitled to payment in the amount so certified.

**2.3.2.3 Trade Contract Closeout; Final Payment:** In consultation with the District and the Architect, CM will assist and participate in the review of Trade Contractors' Applications for Final Payment. CM will compile for transmittal to the District the Closeout documents required by the Trade Contracts, including Record Drawings, Operations and Maintenance Manuals, test certificates, warranties and guarantees. CM will review and in consultation with the District and the Architect, CM will make recommendations to the District as to Final Completion of the Trade Contracts and disbursement of the Final Payment under each of the Trade Contracts.

### **2.3.3 Project Progress:**

**2.3.3.1 Project Schedule:** CM will, in consultation with the District, develop the Project Schedule for Project construction showing the activities necessary for completion of the Project at each School Site along with inter-relationships

between construction activities at a School Site and the overall planned schedule and sequence of Project construction at all of the School Sites. CM will incorporate the Trade Contractors' separate Construction Schedules into the Project Schedule for Project construction. During the course of Project construction and based upon Trade Contractors' updated Construction Schedules, CM shall monitor and update the Project Schedule on a regular basis as may be requested from time-to-time by the District so that the District is kept fully informed at all times of the status and progress of overall Project construction and the status of construction at each School Site. Where the actual rate of Project construction progress is behind that indicated by the Project Schedule, CM shall advise and make recommendations to the District for remedial action.

**2.3.3.2 Trade Contractors' Construction Schedules:** CM shall review Trade Contractors' Construction Schedules and updates thereof, advising the District of compliance with the terms of the Trade Contracts along with measures appropriate to obtain compliance if necessary.

**2.3.3.3 Coordination of Construction Activities:** CM shall generally coordinate the scheduled activities of the Trade Contractors with each other and those of the CM, the Architect and the District for conformity with the Project Schedule, including the general coordination and sequencing of Trade Contractors' construction activities so that Site space is appropriately allocated and the Project Schedule is maintained.

**2.3.3.4 Progress Records:** CM will maintain records of the progress of construction of Project construction, including written progress reports and photographs reflecting the status of Project construction and percentage completion. CM will maintain daily records during Project construction showing weather conditions, Trade Contractors at the Site, work accomplished, problems encountered and other matters materially affecting the Project, completion of the Project or Construction Costs.

**2.3.3.5 Substantial Completion and Final Completion:** Upon request of a Trade Contractor, CM will in conjunction with the District and the Architect determine that Substantial Completion and Final Completion of the Trade Contractor's Trade Contract has been achieved.

#### **2.3.4 On-Site Observations:**

**2.3.4.1 CM On-Site:** During the Project construction and at substantially all times during which there are construction activities under the Trade Contracts, CM shall have its Project Manager or other authorized representative at the Site to observe Site construction activities. CM shall maintain at the Site the Trade Contracts, Drawings, Specifications, approved Change Orders and Submittals.

**2.3.4.2 Construction Quality:** The CM will endeavor to guard the District against defects and deficiencies in construction and workmanship on the basis of its Site observations, and a quality control program established and implemented hereunder to monitor the workmanship of Contractor for conformity with: (a) accepted industry standards; (b) applicable laws, codes, regulations, ordinances or rules; (c) and the requirements of the Trade Contracts.

**2.3.4.3 Rejection of Work:** Whenever in the ordinary course of discharging its services hereunder CM shall discover or observe patent conditions of defective or deficient construction or workmanship which has or may have an adverse impact upon building life-safety systems or operations, structural elements or integrity or the safety of persons or property, CM shall take prompt action appropriate under the circumstances, including stopping the work and thereupon notifying the District in writing. In other circumstances where CM observes defective or deficient Work, the District shall be notified in writing by the CM of such conditions and if directed by the District, the CM

shall stop or reject such Work. CM's responsibilities hereunder shall be limited to defective or deficient work or an apparent and patent nature.

**2.3.4.4 Site Safety:** CM shall review safety programs of the Trade Contractors and advise the District of whether such safety programs comply with the requirements of the applicable Trade Contract and if not recommendations for securing compliance. The CM shall generally monitor the separate safety programs of Trade Contractors during construction; the CM shall advise the District of the failure of any Trade Contractor to maintain safety programs required by its Trade Contract and recommendations for measures to ensure compliance. By undertaking the obligations hereunder, CM shall not be deemed to have assumed responsibility for the adequacy or sufficiency of safety programs implemented by Trade Contractors nor other responsibility for safety of persons or property at the Site.

## **2.3.5 Changes and Claims:**

**2.3.5.1 Coordination of Changes:** CM will coordinate and disseminate correspondence, drawings and other written materials by and between Trade Contractors, the District and the Architect relating to Changes to the work of any Trade Contract. CM will coordinate Trade Contractors' performance of Changes. CM will maintain a log or other records to monitor the status and disposition of Changes and Change Orders to keep the District advised of the status of the same and the actual or potential impact of any particular Change or Change Order or the cumulative effects thereof on Construction Costs or time of Project completion.

**2.3.5.2 Processing of Changes and Change Orders:** CM will assist the District and the Architect in evaluation of requests by Trade Contractors for issuance of Change Orders, assist in negotiations with Trade Contractors' proposals relative to Change Orders and the adjustment of Contract Price or Contract Time under the Trade Contract. CM will make recommendations to the District and the Architect for handling and disposition of Trade Contractors' proposals relative to Change Orders. If a change to the work of any Trade Contract is approved or authorized by the District, CM will assist the District and the Architect in the preparation of a Change Order reflecting such approved or authorized change to the Trade Contract.

**2.3.5.3 Claims Handling:** CM will assist the Architect and District in the review, evaluation, processing and disposition of claims asserted by Trade Contractors or their Subcontractors; CM will make recommendations to the District as to merit, handling and disposition of Trade Contractors' claims.

## **2.4 Post-construction Phase Services:**

**2.4.1 Contract Close-out:** CM will assist the District in finding and resolving remaining cost issues, obtaining and processing final invoices and applications for payment and obtaining required close-out submittals and documentation.

**2.4.2 DSA Close-out:** CM will assist the District and the Architect in obtaining the necessary documentation to obtain close-out with certification from the Division of the State Architect.

**2.4.3 Record Documents:** CM will organize project documents and files including, approved submittals and as-built drawings in a manner sufficient to comply with District requirements for record retention.

## **Article 3 Additional Services:**

**3.1 Additional Services:** The services described in this Article 3 are not included in the Basic Scope of CM's services hereunder. If the District shall request any of the Additional Services described in this Article 3, CM shall be compensated for the same in accordance with the provisions of the Agreement relating to Additional Services.

**3.2 Contingent Additional Services:** If Contingent Additional Services described below are provided by CM through no fault or neglect of CM, CM will be compensated for the same as Additional Services. CM shall provide the following Contingent Additional Services only if directed or authorized in writing by the District. The following constitute Contingent Additional Services:

- a. Services required or necessary as a result of significant changes in the Project scope or other requirements of the Project, including Project size, quality or complexity or material changes to the Project Schedule.
- b. Services required or necessary as a result of the default or termination of the Architect or a Trade Contractor, failure of performance of the District or any Trade Contractor under any Trade Contract, or major defects or deficiencies in the work of a Trade Contractor.
- c. Services and consultation associated or necessitated by damage to the Project prior to completion by fire or other casualty.
- d. Evaluation of excessive claims submitted by Trade Contractors.
- e. Services in connection with any arbitration or other legal proceeding arising out of the Project, except to the extent that CM is a party to such proceeding.

**3.3 Optional Additional Services:** The Optional Additional Services described herein shall be provided by CM only upon the specific written request of the District. Optional Additional Services shall be compensated for in accordance with the terms of this Agreement.

- a. Services relative to future systems, facilities or equipment not included within the scope of the Project.
- b. Services to investigate existing conditions or facilities or to provide measured drawings thereof.
- c. Services in connection with the District's selection, procurement or installation of furniture, furnishing or equipment not included within the scope of the Project.
- d. Any other service not expressly included within the Basic Scope of Services hereunder.

#### **Article 4 Insurance and Indemnity:**

##### **4.1 CM Insurance:**

**4.1.1 Workers Compensation and Employers Liability Insurance:** CM shall purchase and maintain Workers' Compensation Insurance covering claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts may be liable. CM shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee, which arises out of the employee's employment by CM. The Employer's Liability Insurance required of CM hereunder may be obtained by CM as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained by CM hereunder.

**4.1.2 Commercial General Liability and Property Insurance:** CM shall purchase and maintain Commercial General Liability and Property Insurance as will protect CM from the types of claims set forth below which may arise out of or result from CM's services under this Agreement and for which CM may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than CM's employees; (ii) claims for damages insured by usual personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of such person by CM, or (b) by another person; (iii) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting

therefrom; (iv) claims for damages because of bodily injury, death of a person or property damages arising out of Districtship, maintenance or use of a motor vehicle; and (v) contractual liability insurance applicable to CM's obligations under this Agreement. District shall be an additional named insured to CM's commercial general liability insurance policy.

**4.1.3 Professional Liability Insurance:** CM will procure and maintain professional liability insurance covering claims arising out of the performance of services under this Agreement.

**4.1.4 Coverage Amounts:** Insurance to be procured and maintained by CM under this Article 4 shall in the coverage amounts set forth in the Agreement.

**4.1.5 Policy Endorsements: Evidence of Insurance:** CM shall deliver to the District Certificates of Insurance evidencing each of the policies of insurance in the coverage amounts required hereunder. All policies of insurance required hereunder shall be issued by insurer(s) admitted to issue insurance by the State of California and to the reasonable satisfaction of the District. Coverage under each policy of insurance, whether by endorsement or otherwise, shall provide that such policy will not be modified, canceled or allowed to expire without at least thirty (30) days advance written notice to the District.

**4.1.6 Builders Risk Insurance:** During the progress of construction of the Project, the District or each of its Trade Contractors shall obtain and maintain one or more policies of Builder's Risk Completed Value Insurance covering all insurable work of the Project, including extended coverage and insurance against vandalism and malicious mischief, perils of fire, sprinkler leakage, acts of civil authorities, collapse and flood, to the full insurable value of the work of the Project and coverage for work of the Project whether in progress or completed. The District and CM waive all rights against the other, the Architect, and the Trade Contractors for damages caused by perils covered by insurance obtained under this provision. The policy(ies) of Builders Risk Insurance shall contain express waivers of subrogation by the insurer(s) issuing such policy(ies) to the extent of damages or losses covered thereunder. If the District requires and Contractor to obtain a Builders Risk Insurance policy, such policy will contain such waiver of subrogation.

**4.1.7 District General Liability Insurance:** District shall obtain and maintain General Liability Insurance covering District for claims of bodily injury, death or property damage arising out of the Project.

## **4.2 Indemnity:**

**4.2.1 CM Indemnity of District:** CM shall indemnify, defend and hold harmless the District from all claims arising out of this Agreement, including without limitation, claims for bodily injury, death, physical property damage (other than to the work of the Project itself and property damage covered by the Builders Risk Insurance obtained by Trade Contractors) and demands, losses, liabilities or other claims of third parties arising out of, in whole or in part, this Agreement or CM's services hereunder or the negligent or willful acts omissions or other conduct of CM.

**4.2.2 Trade Contractors' Indemnification:** The District shall cause all Trade Contracts awarded in connection with the Project to include specific and express contract provisions whereby each such Trade Contractor agrees to defend, indemnify, and hold harmless the District and CM from all claims arising out of bodily injury (including death) and physical property damage (other than to the work of the Project itself and property covered by the Builders Risk Insurance obtained by Trade Contractors) that may arise out of the respective operations of such Trade Contractors.

**4.2.3 District Indemnity of CM:** The District shall indemnify, defend and hold harmless CM from all claims arising out of this Agreement, including without limitation, claims for bodily injury (including death) and physical property damage (other than to the work of the Project itself and property damage covered by the Builders Risk

Insurance obtained by Trade Contractors) which arise out of the negligent or willful acts, work of the omissions or other conduct of the District.

## **Article 5 Termination; Suspension**

- 5.1 Termination for Default:** Either the District or CM may terminate this Agreement upon seven (7) days advance written notice to the other if there is a default by the other Party in its performance of a material obligation hereunder and such default in performance is not caused by the Party initiating the termination. Such termination shall be deemed effective the seventh (7th) day following the date of the written termination notice, unless during such seven (7) day period, the Party receiving the written termination notice shall commence to cure it default(s) and diligently thereafter prosecute such cure to completion. In addition to the District's right to terminate this Agreement pursuant to the foregoing, the District may terminate this Agreement upon written notice to CM if: (a) CM becomes bankrupt or insolvent, which shall include without limitation, a general assignment for the benefit of creditors or the filing by CM or a third party of a petition to reorganize debts or for protection under any bankruptcy or similar law or if a trustee or receiver is appointed for CM or any of CM's property on account of CM's insolvency; or (b) if CM disregards applicable laws, codes, ordinances, rules or regulations. If District exercises the right of termination hereunder, the amount due CM, if any shall be based upon Basic Services, authorized Additional Services and Reimbursable Expenses incurred or provided prior to the effective date of the District's termination of this Agreement, reduced by losses, damages, or other costs sustained by the District arising out of the termination of this Agreement or the cause(s) for termination of this Agreement. Payment of the amount due, if any, shall be made by District only after completion of the Construction Phase of the Project. CM shall remain responsible and liable to District all losses, damages or other costs sustained by District arising out of termination pursuant to the foregoing or otherwise arising out of CM's default hereunder, to the extent that such losses, damages or other costs exceed any amount due CM hereunder for Basic Services, Reimbursable Expenses or authorized Additional Services.
- 5.2 Districts Right to Suspend:** The District may, in its discretion, suspend all or any part of the construction of the Project, work under a Trade Contract or CM's services hereunder; provided, however, that if the District shall suspend construction of the Project, work under all Trade Contracts or CM's services hereunder for a period of sixty (60) consecutive days or more and such suspension is not caused by CM or the acts or omissions of CM, upon rescission of such suspension, the Contract Price hereunder will be subject to adjustments to provide for actual costs and expenses incurred by CM as a direct result of the suspension and resumption of Project construction or CM's services hereunder.
- 5.3 District's Termination of Agreement for Convenience:** The District may, at any time, upon seven (7) days advance written notice to CM terminate this Agreement for the District's convenience and without fault, neglect or default on the part of CM. In such event, the Agreement shall be deemed terminated seven (7) days after the date of the District's written notice to CM or such other time as the District and CM may mutually agree upon. In such event, the District shall make payment of the Contract Price to CM for services provided through the date of termination plus actual costs incurred by CM directly attributable to such termination.
- 5.4 CM Suspension of Services:** If the District shall fail to make payment of the Contract Price when due CM hereunder, CM may, upon seven (7) days advance written notice to the District, suspend further performance of services hereunder until payment in full is received. In such event, CM shall have no liability for any delays or additional costs of Project construction due to, or arising out of, such suspension.

## **Article 6 General.**

- 6.1 Marginal Headings; Captions:** The titles of the various Paragraphs of the Agreement and the Articles of these Conditions are for convenience of reference only and are not

intended to and in no way shall enlarge or diminish the rights or obligations of CM and District hereunder.

**6.2 Cumulative Rights; No Waiver:** Duties and obligations imposed by this Agreement and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or failure to act by District hereunder shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default by CM.

**6.3 Notices:** Notices CM or District are required or desire to serve on the other shall be valid only if addressed to the other as set forth in the Agreement or modified by notice hereunder from time to time. Notices shall be effective only if by personal delivery requiring signature acknowledging receipt or by United States Mail, Certified, Return Receipt Requested, First Class, postage fully pre-paid.

**6.4 Disputes:**

**6.4.1 Continuation of CM Services:** Except in the event of the District's failure to make undisputed payment of the Contract Price due CM, notwithstanding any disputes between District and CM hereunder, CM shall continue to provide and perform services hereunder pending a subsequent resolution of such disputes.

**6.4.2 Mandatory Mediation:** All claims, disputes and other matters in controversy between the CM and the District arising out of or pertaining to this Agreement shall be submitted for resolution by non-binding mediation conducted under the auspices of the American Arbitration Association ("AAA") and the Construction Mediation Rules of the AAA in effect at the time that a Demand For Mediation is filed. The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the District or the CM commencing arbitration proceedings.

**6.4.3 Arbitration:** All claims, disputes or other matters in controversy between CM and District arising out of the Project or this Agreement shall be settled and resolved by binding arbitration conducted under the auspices of the AAA's Construction Industry Arbitration Rules in effect at the time of the filing of a Demand for Arbitration. If any claim or dispute is asserted by the Architect or any Trade Contractor or the District relating to the Project and arising in whole or in part out of this Agreement, CM and District agree that any arbitration proceedings initiated between CM and District hereunder shall be consolidated with any arbitration proceedings initiated in connection with such other claim or dispute with the Architect or Trade Contractor. An award rendered by an Arbitrator(s) shall be final and binding upon the CM and District only if (a) the Arbitration Award is in writing; and (b) is supported by law and substantial evidence pursuant to California Code of Civil Procedure § 1296, as reflected in the Arbitrator(s)' findings of fact and conclusions of law.

**6.4.4 Severability:** If any provision of this Agreement is deemed illegal, invalid, unenforceable or void by any court of competent jurisdiction, such provision shall be deemed stricken and deleted herefrom, but all remaining provisions will remain and continue in full force and effect.

**6.5 Records:**

**6.5.1 CM Accounting Records:** CM shall maintain complete and accurate records of its personnel engaged in performing any service hereunder, personnel expenses, Reimbursable Expenses and other direct costs incurred in connection with performance under this Agreement. Records shall be maintained on the basis of generally accepted accounting principles applied consistently and shall be available for inspection or reproduction by the District upon reasonable request at any time during CM's performance hereunder. Following completion of the Project and the Agreement or the termination of this Agreement, CM shall maintain accounting records for five (5) years or such longer period required by applicable law, code, rule or regulation, during which time such records shall be available to



District or as otherwise required by law, code, rule or regulation for inspection or reproduction.

- 6.5.2 Project Records:** Records, documents and other materials generated or received by CM in the course of performing services hereunder may, following completion of the Project or termination of this Agreement, be retained by the District in its sole discretion. If requested by the District, the originals of all such documents and records shall be delivered by the CM to the District. The CM may retain a copy (with reproduction at the cost and expense of the CM) of the documents and records delivered to the District pursuant to the preceding.

## **6.6 Definitions:**

- 6.6.1 Trade Contract:** A Contract awarded by the District to a Trade Contractor for the construction of a portion of the Project.
- 6.6.2 Trade Contractor:** The Contractor to the District under a Trade Contract awarded by the District for construction of any portion of the Project.
- 6.6.3 Design Documents:** The Drawings, Specifications, calculations and other work product prepared by the Architect for the Project. Design Documents include surveys, soils reports and other documents prepared for the Project by a licensed Architect or registered Engineer, whether under contract to the Architect or District.
- 6.6.4 Architect:** The Architect is the firm identified in the preamble to the Agreement. References to the Architect include its consultants retained to prepare or provide any portion of the Design Documents.
- 6.6.5 Submittals, Shop Drawings:** Drawings, Product Data or Samples prepared or provided by a Trade Contractor or its Subcontractors or suppliers illustrating some portion of the Work of the Project.
- 6.6.6 School Site:** The physical area for construction and activities on a School Site where the Project consists of multiple School Sites.
- 6.6.7 Site:** The physical area for construction and activities at one or more School Sites relating to construction of the Project.
- 6.6.8 Project Budget:** The Project Budget is the total of costs allocated by the District for design and construction of the Project by the Trade Contractors, exclusive of fees and costs of the Architect, CM and other consultants of the District, site acquisition costs and the costs of furniture, furnishings and/or equipment for the Project. The Project Budget established by the District may be modified by the District from time-to-time.
- 6.6.9 Construction Cost Estimates:** Construction Cost Estimates are estimates prepared by the CM of the then current costs of labor, materials, equipment and services plus a reasonable allowance for the Trade Contractors' profit, overhead and administrative cost as necessary to complete construction of the Project in accordance with the Design Documents. Construction Cost Estimates shall include a reasonable allowance for contingencies relating to market conditions at the time of solicitation of Trade Contractor bids for the Project and Changes in the Work during construction of the Project; the allowance for contingency costs shall be consistent with the contingency established by the District in the Project Budget, if any.
- 6.6.10 Construction Costs:** The costs of labor, materials and equipment (inclusive of the Contractor's administrative costs/profits) necessary to complete construction of the Project.
- 6.6.11 Project Schedule:** The Project Schedule is a written or graphic description prepared by the CM showing the various activities necessary to complete Project construction at each of the School Sites, the sequencing of such activities and inter-relationships between such activities at a School Site and between the School

Sites. The Project Schedule shall incorporate each Trade Contractors' Construction Schedule.

- 6.6.12 Construction Schedule:** A Construction Schedule is the written or graphic description of the scheduling, sequencing and interrelationships of activities necessary to complete a Trade Contract. Construction Schedules are prepared by the Trade Contractors for review and acceptance by the District and for incorporation into the Project Schedule by the CM.
- 6.6.13 Construction Contract Documents:** The Contract Documents issued by or on behalf of the District under a Trade Contract for the Project. Construction Contract Documents include all modifications issued by or on behalf of the District.
- 6.6.14 Construction Contract Price:** The aggregate amount to be paid by the District to the Trade Contractors under the Trade Contracts awarded for construction of the Project, including modifications authorized by Change Order(s).
- 6.6.15 Substantial Completion:** Substantial Completion is when the Work of a Trade Contract has been completed and installed and the Work can be used or occupied for its intended purposes, subject only to minor corrections, repairs or modifications.
- 6.6.16 Final Completion:** Final Completion is when all of the Work of a Trade Contract has been completed and installed (including items noted for correction, repair or modification upon Substantial Completion) and the Trade Contractor has completed all other obligations to be performed on its part under the Trade Contract.

[END]

Amendment No. 3 to  
Agreement between  
Santa Clara Unified School District and  
Strawn Construction Management & Development, Inc.  
April 28, 2016

Exhibit A  
CM Fee Development Matrix  
Agreement for Construction Management Services  
9/12/2017

Project	Role	2017					Hours Per Month					2018					2019										Hours	Total Rate	Per Hour Staffing
		Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May						
Callejon Portables 2018	Sr. Project Mgr.							44	44	22														110	\$172.00	\$ 18,920.00			
Callejon Portables 2018	Superintendent							172	172	88														432	\$132.00	\$ 57,024.00			
Callejon Portables 2018	Administrator							44	44	44														132	\$ 79.00	\$ 10,428.00	\$ 86,372.00		

Amendment No. 3 to  
Agreement between  
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Strawn Construction Management Development, Inc.  
April 28, 2016

Exhibit B  
Rate Schedule  
Agreement for Construction Management Services  
September 12, 2017

<u>Role</u>	<u>Hourly Rate</u>
Principal	\$172.00
Senior Project Manager	\$172.00
Superintendent	\$132.00
Assistant Construction Manager	\$98.00
Site Safety Coordinator	\$95.00
Administrator	\$79.00

Amendment No. 3 to  
Agreement between  
Santa Clara Unified School District and  
Strawn Construction Management Development, Inc.  
April 28, 2016

Exhibit C  
Scope of Work  
Agreement for Construction Management Services  
September 12, 2017

Callejon School Portables Project

Construction coordination for the installation of three classroom portables and one toilet portable for the 2018/2019 school year.