

MASTER AGREEMENT FOR CONSTRUCTION/ PROJECT MANAGEMENT SERVICES

This Construction/ Project Management Services Agreement ("Agreement") is made and entered into this 20th day of October, 2014, by and between the Ocean View School District (hereinafter referred to as "District") and Ledesma & Meyer Construction Company, Inc. (LMCCI) (hereinafter referred to as "Construction Manager") for construction management services relating to the following eleven (11) projects (hereinafter referred to collectively as "Project"):

Circle View Elementary School Modernization
College View Elementary School Modernization
Golden View Elementary School Modernization
Hope View Elementary School Modernization
Lake View Elementary School Modernization
Oak View Elementary School Modernization
Star View Elementary School Modernization
Sun View Elementary School Modernization
Mesa View Middle School Modernization
Spring View Middle School Modernization
Vista View Middle School Modernization

ARTICLE I – CONSTRUCTION MANAGER’S SERVICES AND RESPONSIBILITIES

Construction Manager represents to the District that it has the necessary license for a Construction Manager as provided for in Government Code Section 4525, et seq.; that it has expertise and experience in construction supervision; bid evaluation; project scheduling; cost benefit analysis; claims review and negotiation; and general management and administration of construction projects. Construction Manager covenants to provide its best skill and judgment in furthering the interests of the District in the management of the construction of the Project. Construction Manager agrees to furnish efficient business administration and management services and to perform in a manner consistent with the interests of the District. The Construction Manager's Services for the Project shall be as follows and as enumerated within Exhibits "A", "B" and "C" to this Agreement. All services provided by the Construction Manager under this Agreement shall be provided by or under the direction and control of a licensed general contractor and/or properly licensed trade contractors. Basic Services to be provided by the Construction Manager are those enumerated in the Basic Services (Exhibit "A" hereto) and those enumerated in the General Conditions (Exhibit "B" hereto).

1.1 BASIC SERVICES

1.1.1 Construction Manager's "Basic Services" consist of those services performed by Construction Manager and Construction Manager's employees and consultants to provide the specific services enumerated in Exhibit "A" and in the General Conditions (Exhibit "B").

1.2 CONSTRUCTION PHASE

1.2.1 Provide ongoing senior management observation of the progress of the work to assist the District.

1.2.2 Provide senior management at the request of the District to provide assistance to resolve any issues that are critical to Schedule or Budget considerations.

1.2.3 Provide ongoing senior management involvement in progress meetings.

1.3 GENERAL CONDITIONS

1.3.1 "General Conditions" of the Project are defined as those generic support conditions which must be in place to support all construction aspects of the Project. Such costs are enumerated within Exhibit "B".

1.4 ADDITIONAL SERVICES

1.4.1 Additional Services are defined, for the purpose of this Agreement, as any services performed in the interest of the Project, at the written request of the District, which are outside the scope of this Agreement (including necessary emergency services as required to permit the timely & safe occupancy of students, faculty, staff, administration, parents, and general public at all sites).

1.4.2 Pursuant to Education Code section 17596, the total term of this Agreement, including all extensions, shall not exceed five (5) years. If, through no fault of the Construction Manager, the duration of the Project which is the subject of this Agreement beyond the time frame depicted in Exhibit "C", Construction Manager shall be entitled to additional compensation and costs based on the rates set forth in Exhibit "B" and as set forth below. Construction Manager shall obtain written approval from the District prior to incurring any additional costs related to the Project.

1.4.3 District shall compensate Construction Manager for any extended durations set forth in Article 1.4.2 above based on the Schedule of Personnel and costs set forth in Exhibit "B" and any approved reimbursable expenses. Alternatively, the District and Construction Manager may agree in writing to a fixed fee or other payment terms. All costs to be paid for any extended durations must be accompanied by time sheets detailing information including, but not limited to, the name of the employee, date, a description of the task performed in sufficient detail to allow the District to determine the services provided, and the time spent for each task. The District and Construction Manager may otherwise mutually agree, in writing, on alternative types of information and levels of detail that may be provided by the Construction Manager.

1.4.3 If, during the planned duration of the Project as identified within Exhibit "C", the District requests that additional personnel or other resources be provided beyond those set forth in Exhibit "B" for reasons other than extension of the period of services identified within Article 1.4.2, such additional resources shall be provided by written amendment between the District and Construction Manager which amendment shall provide for equitable adjustment of Construction Manager's compensation.

1.5 PERSONNEL

1.5.1 If at any time any of the personnel employed by the Construction Manager on the Project are reasonably deemed unsatisfactory by the District and the District requests that they be replaced, Construction Manager shall, within a reasonable time, replace such personnel without additional cost to the District.

1.5.2 Construction Manager agrees to provide the personnel set forth in the schedule attached to Exhibit "B". Changes made to Construction Manager's staff shall be made only with the prior written consent of the District.

1.5.3 Any proposed staff changes shall only be considered after resumes are submitted for District review and the District is given the opportunity to interview the suggested personnel. District retains the right to reject newly proposed personnel based on qualifications or other relevant criteria.

ARTICLE II – DISTRICT'S RESPONSIBILITIES

2.1 PROJECT INFORMATION

2.1.1 The District shall provide full and complete information regarding the requirements of the Project, which shall set forth the District's objectives, constraints and criteria.

2.2 BUDGET

2.2.1 The District shall provide a budget for the Project with the assistance of the Construction Manager and Architect.

2.3 DISTRICT'S REPRESENTATIVE

2.3.1 The District shall designate a representative ("District's Representative") to act on the District's behalf with respect to the Project. The authorized Representative shall render decisions promptly to avoid unreasonable delay in the progress of the Construction Manager's services and shall expeditiously process contractor payment applications and change order documentation and shall make all required payments in a timely manner.

2.3.2 In addition, the District shall promptly and properly file Notice(s) of Completion upon written recommendation by Architect and Construction Manager for the Project or designated portion(s) thereof.

2.4 TESTS, INSPECTION AND REPORTS

2.4.1 The District shall furnish tests, inspections and reports as required by law or the Contract and Construction Documents.

2.5 DISTRICT'S EXPENSE

2.5.1 The services, information and reports required by Articles 2.1 through 2.4, inclusive, shall be furnished at the District's expense.

2.6 NONCONFORMING WORK

2.6.1 If the District observes or otherwise becomes aware of any fault or defect in the Project, or nonconformance with the contract documents, the District shall give prompt notice thereof to the Construction Manager.

2.7 DISTRICT'S RIGHT TO PERFORM WORK

2.7.1 The District reserves the right to perform work related to the Project with the District's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement.

2.7.2 The Construction Manager shall notify the District if any such independent action will in any way compromise the Construction Manager's ability to meet the Construction Manager's responsibilities under this Agreement.

ARTICLE III – CONSTRUCTION MANAGER'S COMPENSATION

3.1 FEE

3.1.1 The District agrees to pay the Construction Manager for performance of all Construction Management services contemplated under the terms of the Agreement, a fee for services as calculated and set forth in Exhibit "A".

3.2 GENERAL CONDITIONS AND FIELD PERSONNEL

3.2.1 The District shall pay, in addition to Construction Manager's fee, an additional amount as reimbursement for General Conditions and Field Personnel costs as set forth in Exhibit "B".

3.3 REDUCTION IN BASIC SERVICES

3.3.1 The District may reduce, for its convenience, the Basic Services to be provided by the Construction Manager at any time during the contract period. Should a reduction in General Conditions and fee based personnel be requested by the District also include a requested reduction in the Construction Manager's on-site personnel, the Construction Manager shall be allowed a maximum of 60 days to reassign personnel.

3.3.2 The Construction Manager's fee shall be reduced for any reduction in the on-site term of any personnel pursuant to Exhibit "B".

3.4 COMPENSATION FOR ADDITIONAL SERVICES

3.4.1 Construction Manager shall notify the District in writing of the need for additional services required due to circumstances beyond the Construction Manager's control ("Additional Services"). Construction Manager shall obtain written authorization from the District before rendering Additional Services (except in the event of an emergency in as discussed in article 1.4.1 above). Compensation for all valid Additional Services shall be negotiated and approved in writing by the District before such Additional Services are performed by the Construction Manager (except in the event of an emergency in as discussed in article 1.4.1 above). No compensation shall be paid to the Construction Manager for any Additional Services that are not previously approved by the District in writing (except in the event of an emergency in as discussed in article 1.4.1 above).

3.4.2 Compensation for any Additional Services authorized by the District in writing during the planned duration of services shall be made on the basis of:

- (a) Personnel Services: Cost rates contained in the Schedule of Personnel. This sum represents both direct reimbursement of Field Personnel costs and fees for Construction Manager.
- (b) Materials and/or outside services at cost.
- (c) Miscellaneous approved Reimbursable Expenses at cost.

3.5 REIMBURSABLE EXPENSES

3.5.1 "Reimbursable Expenses" include any authorized expense incurred by the Construction Manager and Construction Manager's employees and consultants in the interest of the Project which are outside the scope of Construction Manager's Basic Services, as identified within Exhibit "A" or its General Conditions and Field Personnel as identified with Exhibit "B", which expenses include, but not by way of limitation:

- 3.5.1.1 Expenses in connection with authorized out-of town travel;
- 3.5.1.3 Fees paid for securing approval of authorities having jurisdiction over the Project when District requests Construction Manager to pay for such costs on behalf of the District.
- 3.5.1.5 Expense of reproductions, postage and expressage related to submittals and shop drawings and handling of drawings, specifications and other documents.

3.5.2 Payment for Reimbursable Expenses shall be on the basis of cost ~~plus ten percent~~.

3.5.3 Payment for Reimbursable Expenses shall be made monthly, on the basis of Construction Manager's submittal of an appropriate invoice with accompanying cost documentation. Reimbursable expenses shall be invoiced separately from Basic or Additional Services.

ARTICLE IV – PAYMENT SCHEDULE

4.1 THE FEE FOR BASIC SERVICES AND GENERAL CONDITIONS

The fee for Basic Services set forth in Article 3 shall be paid monthly, in arrears, as follows:

4.1.1 Payment for Basic Services, unless otherwise agreed to in writing, shall be made monthly in an amount equal to the total of all documented costs incurred by the Construction Manager in accordance with Exhibits “A” and “B”.

4.1.2 Payment for General Conditions costs, unless otherwise agreed to in writing, shall be made monthly in an amount equal to the total of all documented costs incurred by the Construction Manager for items identified as General Conditions and Field Personnel within Exhibit “B”, subject to any limitation of General Conditions costs identified therein.

4.1.3 Payment for authorized Additional Services shall be made monthly, on such basis as shall be specified within the agreement authorizing such services.

4.1.4 All payments called for within Articles 4.1.1 through 4.1.3, above, shall be made to Construction Manager within 45 days of Construction Manager’s submittal of a properly prepared and approved invoice or application for payment.

4.1.5 In the event that the District disputes any charge or cost contained within Construction Manager’s invoice or application for payment, the amount then due Construction Manager shall be reduced by no more than 100% of the sum in dispute and the balance timely paid.

4.1.6 If the District reduces any invoice or application for payment submitted by Construction Manager, the District shall, within not more than 15 days of the District’s receipt of the invoice or application for payment, inform Construction Manager, in writing, of the amount and reason for such reduction. Within not more than 10 days of receipt of such notice, Construction Manager shall prepare and submit, to the District, any requested explanation or justification of the amounts in dispute. The District shall, within not more than 10 days of the District’s receipt of Construction Manager’s explanation or justification, either pay the disputed amount or provide Construction Manager with a written explanation of the District’s continuing objection. Construction Manager and the District agree to seek, in good faith, a timely and equitable resolution of any disputed amounts.

4.1.7 So long as District is not in default in making payment of undisputed funds to Construction Manager, notwithstanding any claim, dispute or other disagreement between the Construction Manager and the District arising out the Project or this Agreement, pending resolution of the same in accordance with the Agreement, the Construction Manager shall continue to diligently provide and perform hereunder pending a subsequent resolution of such claims, dispute, or other disagreement.

4.2 PROJECT SCHEDULE

4.2.1 Time Schedule. The services to be provided under this Agreement shall be completed in accordance with the schedule attached hereto as Exhibit "C".

4.2.2 At the time the Construction Manager's work commences, a date for substantial completion of the Project shall also be established.

4.2.3 The date of completion of the Project or a designated portion thereof is the date when construction is complete to the level that all contractual work is complete in the opinion of the Architect, Construction Manager and Project Inspector. Construction Manager shall endeavor to secure warranties called for by this Agreement or by the plans and specifications from Contractor which shall commence on the Date of Completion of the Project or designated portion thereof.

4.2.4 If the Construction Manager is delayed at any time in the progress of the Project by any act or neglect of the District or the Architect or by any employee of either, or by any separate contractor employed by the District, or by changes ordered in the project, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipated, unavoidable casualties or any causes beyond the Construction Manager's control, or by any delay authorized or caused by the District, the above time schedules shall be extended by change order for a reasonable length of time as set forth in Article 1.4.2.

ARTICLE V – TERMINATION, ABANDONMENT OR SUSPENSION OF WORK

5.1 TERMINATION OF CONSTRUCTION MANAGER SERVICES FOR CAUSE

The District may give seven (7) days written notice to Construction Manager of District's intent to terminate the Construction Manager's services under this Agreement for failure to satisfactorily perform or provide prompt, efficient or thorough service or Construction Manager's failure to complete its services or otherwise comply with the terms of this Agreement. If after the expiration of such seven (7) days, Construction Manager fails to cure the performance as set forth in the District's notice of intent to terminate the Construction Manager's services, District may issue a notice of termination. At that time, Construction Manager's services shall be terminated as set forth in District's notice. In the event of termination due to a breach of this Agreement by Construction Manager, the compensation due Construction Manager upon termination shall be reduced by the amount of damages and liquidated damages sustained by District due to such breach.

In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience in accordance with Article 5.3 below, and Construction Manager shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Construction Manager.

5.2 ABANDONMENT/ SUSPENSION OF PROJECT

5.2.1 The District has the absolute discretion to suspend or abandon all or any portion of the work on a Project and may do so upon fourteen (14) days written notice to the Construction Manager. Upon notice of suspension or abandonment, Construction Manager shall immediately discontinue any further action on the Project. If the entire work to be performed on a Project is abandoned, the parties shall each be relieved of the remaining executory obligations of the Agreement, as it relates to the Project, but shall not be relieved of any obligations arising prior to said abandonment. In the event the District abandons or suspends the work on the Project, there shall be due and payable within thirty (30) days following such abandonment or suspension compensation for all approved services performed and all approved expenses incurred pursuant to this Agreement supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement plus any sums due the Construction Manager for approved extra services.

5.2.2 If the Project is resumed after being suspended for more than three (3) months, the Construction Manager's compensation shall be resumed in a similar manner (prorated portion of lump sum agreement, based upon time remaining). Any services provided by the Construction Manager at the request of the District during the period of suspension shall be subject to equitable compensation, which compensation shall not be applied against any fixed limits of fee or costs provided for within this Agreement.

5.2.3 If the Project is suspended in whole or in part for more than three (3) months and, if no arrangement is made between the District and the Construction Manager to retain specific staff during the period of suspension, reassignment of any or all of the personnel assigned to the Project to other projects may occur. In the event that the suspended Project is then resumed, the Construction Manager shall re-staff the Project to the same level as at the time of suspension (provided that the scope of remaining work shall not have been reduced) and shall make a good faith effort to use as many of the original personnel as is practical. Where individuals assigned to the Project at the time of suspension are not reasonably available at the time of resumption, the Construction Manager shall assign other personnel of similar skill and experience as approved by the District.

5.2.4 If construction of the Project has started and is stopped for a material period of time by reason or circumstances not the fault of the Construction Manager, the District shall pay the Construction Manager's General Conditions and Field Personnel costs for the first 30 days of stoppage up to, but not to exceed, the level of such costs for the 30 day period immediately preceding the stoppage.

5.2.5 The Construction Manager shall reduce the size of the Project-site staff after thirty (30) days' delay or sooner if feasible, for the remainder of the delay period. The District shall reimburse the Construction Manager only for the actual costs of such reduced staff and extended General Conditions during such delay up to a maximum of 90 days delay. If such delay shall exceed 90 days in duration, any Project-site staff and General

Conditions remaining on the Project at the District's request shall constitute Additional Services and shall be compensable on that basis through the end of any stoppage period. Upon termination of the stoppage, the Construction Manager shall return or provide the necessary Project site-staff as soon as practicable and no further compensation shall be paid for the delay.

5.3 TERMINATION FOR CONVENIENCE (WITHOUT CAUSE)

District shall also have the right in its absolute discretion, without cause, to terminate this Agreement in the event the District is not satisfied with the working relationship with Construction Manager following fourteen (14) days prior written notice from District to Construction Manager. In the event that District chooses to terminate this Agreement for convenience, without cause, Construction Manager shall be compensated for all approved services performed and all approved expenses incurred pursuant to this Agreement supported by documentary evidence, including payroll records, and expense reports up until the date of the termination for convenience plus any sums due the Construction Manager for approved extra services. In addition to the compensation described above, the Construction Manager will receive a payment equal the payment of: (1) 3% of the Basic Services Fees incurred to date if less than 50% of the Basic Services Fees have been paid; or (2) 3% of the remaining Basic Services Fees if more than 50% of the Basic Services Fees have been paid. This payment is agreed to compensate Construction Manager for any damages resulting from early termination and is consideration for entry into this termination for convenience clause.

5.4 CONTINUANCE OF WORK

In the event of a dispute between the parties as to performance of the work or the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, Construction Manager agrees to continue the work diligently to completion. If the dispute is not resolved, Construction Manager agrees it shall neither rescind the Agreement nor stop the progress of the work, but Construction Manager's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the Project has been completed, and not before.

5.5 DELIVERY OF DOCUMENTS

Upon any termination, abandonment or suspension, Construction Manager shall deliver to District all documents, files, reports, etc. (regardless of medium or format) related to the Project within ten (10) days of such termination, abandonment or suspension. Failure to comply with this requirement shall be deemed a material breach of this Agreement.

ARTICLE VI – INDEMNIFICATION

6.1 DUTY TO DEFEND, INDEMNIFY AND HOLD HARMLESS

To the fullest extent permitted by law, Construction Manager agrees to indemnify, defend and hold District entirely harmless from all liability arising out of:

6.1.1 Workers Compensation and Employers Liability. Any and all claims under Workers' Compensation acts and other employee benefit acts with respect to Construction Manager's employees or Construction Manager's sub-consultant's employees arising out of Construction Manager's work under this Agreement. The Construction Manager, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the District, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the District, its officers, agents or employees in any action, suit or other proceedings as a result thereof, and;

6.1.2 General Liability. Liability for damages for (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of law or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by the District, or any person, firm or corporation employed by the Construction Manager or the District upon or in connection with this Agreement or the Project, except for liability resulting from the sole or active negligence, or willful misconduct of the District, its officers, employees, agents or independent consultants who are directly employed by the District. The Construction Manager, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the District, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the District, its officers, agents or employees in any action, suit or other proceedings as a result thereof; and

6.1.3 Professional Liability. Any loss, injury to or death of persons or damage to property caused by any act, neglect, default or omission of the Construction Manager, or any person, firm or corporation employed by the Construction Manager, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation including the District, arising out of, or in any way connected with the Construction Management Services, including injury or damage either on or off District property; but not for any loss, injury, death or damages caused by sole or active negligence, or willful misconduct of the District.

6.1.4 The indemnity requirements described in this Article 6 is intended to apply during the period of Construction Manager's performance under this Agreement and shall survive the expiration or termination of this Agreement.

ARTICLE VII – SUCCESSORS AND ASSIGNS

This Agreement is binding upon and inures to the benefit of the successors, executors, administrators, and assigns of each party to this Agreement, provided, however, that the Construction Manager shall not assign or transfer by operation of law or otherwise any or all rights, burdens, duties, or obligations without prior written consent of the District. Any attempted assignment without such consent shall be invalid.

ARTICLE VIII – APPLICABLE LAW

This Agreement shall be governed by the laws of the State of California and any policies/regulations adopted thereunder (“Applicable Law”). To the extent that there is any inconsistency between this Agreement and the Applicable Law, or this Agreement omits any requirement of the Applicable Law, the language of the Applicable Law, in effect on the date of the execution of this Agreement, shall prevail.

ARTICLE IX – CONSTRUCTION MANAGER NOT OFFICER OR EMPLOYEE OF DISTRICT

While engaged in carrying out and complying with the terms and conditions of this Agreement, the Construction Manager is an independent contractor and not an officer or employee of the District.

ARTICLE X – INSURANCE

10.1 INSURANCE PROVIDED BY CONSTRUCTION MANAGER

The Construction Manager shall purchase and maintain insurance for not less than the following limits or greater if required by law:

10.1.1 The Construction Manager shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to District which will protect Construction Manager and District from claims which may arise out of or result from Construction Manager’s actions or inactions relating to the Agreement, whether such actions or inactions be by themselves or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

10.1.2 The Construction Manager shall carry Workers’ Compensation and Employers Liability Insurance in accordance with the laws of the State of California in an amount not less than One Million Dollars (\$1,000,000).

10.1.3 Comprehensive general and auto liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit, bodily injury and property damage liability per occurrence, including:

- (a) Owned, non-owned and hired vehicles;
- (b) Blanket contractual;
- (c) Broad form property damage
- (d) Products/completed operations; and
- (e) Personal injury.

10.1.4 Professional liability insurance, including contractual liability, with limits of \$1,000,000, per occurrence. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least three (3) years thereafter and/or at rates consistent with the time of execution of this Agreement adjusted for inflation.

10.1.5 Each policy of insurance required in Article 10.1.3 above shall name the District and its officers, agents and employees as an additional insured; shall state that, with respect to the operations of Construction Manager hereunder, such policy is primary and any insurance carried by District is excess and non-contributory with such primary insurance; shall state that no less than thirty (30) days' written notice shall be given to District prior to cancellation; and, shall waive all rights of subrogation. Construction Manager shall notify District in the event of material change in, or failure to renew, each policy. Prior to commencing work, Construction Manager shall deliver to District certificates of insurance as evidence of compliance with the requirements herein. In the event Construction Manager fails to secure or maintain any policy of insurance required hereby, District may, at its sole discretion, secure such policy of insurance in the name of an for the account of Construction Manager, and in such event Construction Manager shall reimburse District upon demand for the costs thereof.

10.2 INSURANCE PROVIDED BY DISTRICT

10.2.1 The District shall provide and maintain standard fire, flood and "All Risk" Insurance including "XCU" coverage up to the full insurable value of the Project. Policies providing such coverage shall contain a provision that coverages afforded under the policies will not be canceled or not renewed until at least thirty (30) days' prior written notice has been given to the Construction Manager.

10.2.2 Certificates of Insurance and Endorsements showing such coverages to be in force throughout construction of the work shall be filed with the Construction Manager prior to commencement of construction activities.

10.3 INSURANCE POLICY INCLUSIONS

10.3.1 The foregoing policies to be carried by the Construction Manager shall contain a provision that coverages afforded under the policies will not be canceled or not renewed until at least thirty (30) days' prior written notice has been given to the District.

10.3.2 Certificates of Insurance and Additional Insured Endorsements showing such coverages to be in force throughout construction of the work shall be filed with the District prior to commencement of the work.

10.4 WAIVERS OF SUBROGATION

10.4.1 The District and Construction Manager waive all rights against each other and against the Contractors, Architect, consultants, agents and employees of any of them, for damages, but only to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance.

10.4.2 The District and Construction Manager each shall require similar waivers from their Contractors, Architect, consultants, agents, and persons or entities awarded separate contracts administered under the District's own forces.

ARTICLE XI – ENTIRE AGREEMENT

This Agreement and the attached Exhibits “A” and “B” represent the entire Agreement and understanding of the parties concerning the subject matter hereof; this Agreement replaces and supersedes prior negotiations or Agreements between the parties concerning the subject matter hereof. This Agreement may be amended or modified only by a written instrument duly executed by the parties. In accordance with California Education Code section 17604, this Agreement is not a valid or enforceable obligation against the District until approved or ratified by motion of the Governing Board of the District duly passed and adopted.

ARTICLE XII – OWNERSHIP OF DOCUMENTS

All documents, files, reports, estimates, etc. (regardless of format or medium) prepared or compiled by the Construction Manager related to the Project shall be, and remain the property of the District.

ARTICLE VIII – LIQUIDATED DAMAGES

13.1 ASSESSMENT OF LIQUIDATED DAMAGES

13.1.1 If the work is not completed within the time specified in Exhibit “B” to this Agreement plus applicable extensions of time, it is understood that the District will suffer damages. The Construction Manager and District hereby agree that the exact amount of damages for failure to complete the work within the time specified is extremely difficult or impossible to determine. Construction Manager shall be assessed the sum of Three Hundred dollars (\$300.00) per day as liquidated damages for each and every day the work required under this Agreement remains unfinished past the time for completion, as set forth in the Agreement, and any extensions of time granted by the DISTRICT under the terms of the contract documents.

13.2 FAULT OF CONSTRUCTION MANAGER

13.2.1 Construction Manager shall not be charged for liquidated damages, as set forth above, because of any delays in completion of work which are not the fault or negligence of Construction Manager, including but not restricted to: acts of God, acts of public enemy, acts of Government, fires, floods, epidemics and quarantine restrictions.

13.2.2 Construction Manager shall absorb its own cost of providing Basic Construction Services during any schedule extension, if said extension is caused by Construction Manager, and only to the extent that the schedule extension is caused by Construction Manager. The Construction Manager under no circumstances will be liable for any damages for delay other than as set forth herein unless determined otherwise by a court of law.

13.3 COMPLETION DATES

Notwithstanding anything to the contrary herein, completion dates will be mutually agreed upon in writing during the Project Schedule as documents become available and such agreement will become a part of this Agreement.

The parties, through their authorized representatives, have executed this Agreement as of the day and year first written above.

CONSTRUCTION MANAGER:

DISTRICT:

Ledesma & Meyer Construction Company Inc.

Ocean View School District

By: 

By: 

President

SUPERINTENDENT

EXHIBIT "A"
CONSTRUCTION MANAGER'S SERVICES
To Be Provided Under
CONSTRUCTION MANAGEMENT AGREEMENT

Between
Ocean View School District
and
LEDESMA & MEYER CONSTRUCTION COMPANY, INC. (LMCCI)

Dated: October 20, 2014

The Construction Manager shall provide all of the services set forth herein and necessary to complete the Project. The scope of services in this Exhibit "A" and the scope of services set forth in the Construction Manager's Agreement shall be described as the "Basic Services."

1. CONSTRUCTION MANAGER'S SERVICES

1.1 Construction Manager shall provide sufficient home office organization and support, personnel and management to carry out the requirements of this Agreement in an expeditious and economical manner consistent with the interests of the District.

1.2 Construction Manager shall prepare and periodically update a Project Schedule for the Architect's review and the District's acceptance. Construction Manager shall obtain the Architect's approval for the portion of the preliminary Project Schedule relating to the performance of the Architect's services. In the Project Schedule, Construction Manager shall coordinate and integrate Construction Manager's services, the Architect's services and the District's responsibilities with anticipated construction schedules, highlighting critical and long-lead-time items.

1.3 Construction Manager shall consult with the District and Architect regarding the Construction Documents and make recommendations whenever design details adversely

affect constructability, cost or schedules. Construction Manager shall review the contract document submissions and provide written comments on the coordination of the various disciplines, including civil, structural, architectural, mechanical, electrical, plumbing and landscape.

1.4 Construction Manager shall provide recommendations and information to the District and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Contractors. Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

1.5 If applicable, Construction Manager shall assist the District in developing and implementing a plan for temporary housing of students and staff.

1.6 Construction Manager shall provide recommendations and information to the District regarding the allocation of responsibilities for safety programs among the Contractors.

1.7 Construction Manager shall review the originally contracted scope of work in the existing Lease Lease-Back contracts (written by others) and work with the District and their Legal Counsel to determine how to best contract for any additional work scope to those contracts necessitated by the adverse physical conditions already existing on the eleven sites when LMCCI was hired. If multiple contracts are to be awarded, Construction Manager shall review the Construction Documents and make recommendations as required to provide that (1) the work of the Contractors is coordinated, (2) all requirements for the Project have been assigned to the appropriate Contract(s), (3) there are no gaps, overlaps or missing scope in the work assigned to various Contract(s), and (4) proper coordination has been provided for phased construction.

1.8 Provide senior management support for all tasks.

2. PRE-CONSTRUCTION PHASE

2.1 Provide review and comments on the program scope and budget.

2.2 Construction Manager shall develop in conjunction with the District and the Architect, procedures to facilitate and expedite communications among the Contractor, the Architect, the District, Construction Manager, and the test/inspection services relating to the submittal, review, and response to documents provided to Construction Manager, including: correspondence, memoranda, Requests for Information/Requests for Clarification, Field Bulletins/Field Clarifications, Construction Change Documents, District or Architect Field Directives, Submittals, Change Order Requests/Proposal Requests/Change Estimate Requests, Change Orders and similar items.

2.3 Review the District's program of requirements, schedule goals and existing budget data. Produce initial representative estimates of the value of the proposed

improvements for several schools under current market conditions, based upon available program and design documentation. Where Construction Manager's initial estimate indicates that projected costs may be at variance with the District's budgetary goals, Construction Manager shall present such issues to the District and Architect in writing, along with any readily apparent alternatives which may be identified. Construction Manager shall cooperate with the District and Architect in identifying and implementing additional potential cost adjustment measures which might be employed in order to reach budgetary goals.

2.4 Construction Manager shall prepare a Project Schedule providing for the components of the work, including phasing of construction, times of commencement and completion required of each Contractor, and the occupancy requirements of the District. Construction Manager shall provide the current Project Schedule to be included in the bidding documents.

2.5 Construction Manager shall assist the District in the preparation of construction contracts. Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress and scheduling. Construction Manager shall prepare and promptly distribute minutes to the District, Architect and Contractors. Construction Manager shall provide observation and administration of the Contracts for Construction in cooperation with the Architect as set forth below and in the General Conditions. All contracts between the District and Contractors shall be in a form acceptable to Construction Manager and shall also include broad form indemnity and insurance clauses in favor of and protecting the District and Construction Manager in a form acceptable to Construction Manager. Such insurance clauses shall include, without limitation, provisions naming the District and Construction Manager as additional insureds, showing insurer's prior written notice of non-renewal or modification to the foregoing, and evidence of all such obligations being evidenced on insurer's insurance certificates provided to the District and Construction Manager throughout the term of the Project until final completion.

2.6 Construction Manager shall assist the District in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the various Contractors. Construction Manager shall verify that the District has paid applicable fees and assessments. Construction Manager shall assist the District and Architect in connection with the District's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

2.7 Construction Manager shall develop and implement procedures for the review and processing of applications by Contractors for progress and final payments.

2.8 Construction Manager shall provide a Construction Cost Estimate, in cost model format, based upon Architect's delivery of complete Construction Documents depicting a work scope which represents at least 60% of the likely total of all apportionments and the local share for the Project to confirm compliance with DSA requirements for review and approval and with the District's budget goals. Should significant variance be detected between projected cost and such criteria, Construction Manager shall inform the District

and the Architect in writing and shall coordinate necessary working sessions between the District, Architect and Construction Manager to identify measures to be taken to bring the Project and documents within budget and scope parameters. At the conclusion of such sessions, Construction Manager, in conjunction with the District, shall request commitments from the Architect(s) for design or documentation adjustments to the documents, in an effort to meet the District's specified criteria.

2.9 Construction Manager shall provide a Construction Cost Estimate, in cost model format, based upon Architect's delivery of 50% and 90% complete Construction Documents and updated prior to bid depicting the full scope of intended improvements, to confirm compliance with cost management measures agreed to throughout design phase and to ensure compliance with the District's budget goals. Should significant variance be detected between projected cost and such goals, Construction Manager shall so inform the District and the Architect in writing and shall coordinate necessary working sessions between the District, Architect and Construction Manager to identify measures to be taken to bring the Project back within budgetary limits. At the conclusion of such sessions, Construction Manager, in conjunction with the District, shall request commitments from the Architect for design adjustments to the documents in an effort to maintain the Project budget.

2.10 In collaboration with the District and the Project Architect, Construction Manager shall prepare a draft Construction Management Plan for the Project. This plan shall reflect the construction delivery method, the time frame for construction, and the attendant design efforts required. In preparation for this Construction Management Plan, Construction Manager shall evaluate the local construction market and the District's schedule and budgetary goals for the Project, and make recommendations to the District regarding the recommended strategy for purchasing, construction, the approach to bid packaging the work and a proposed Master Project Schedule. Upon approval by the District of the Construction Management Plan, Construction Manager shall prepare the Construction Management Plan in final form.

3. CONSTRUCTION COST

3.1 RESPONSIBILITY FOR CONSTRUCTION COST

3.1.1 Evaluations of the District's Project budget and Construction Cost Estimates prepared by Construction Manager represent Construction Manager's best judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither Construction Manager nor the District has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project budget proposed, established or approved by the District, or from any evaluation prepared by Construction Manager. The Construction Manager shall coordinate with the District to agree on what costs are included to define "Construction Cost" for the Project.

3.1.2 If the Bidding or Negotiation Phase has not commenced within 90 days after approval of the Construction Documents from DSA, any Project budget shall be adjusted 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 bids/ proposals are sought.

3.2 Provide recommendations regarding constructability and value engineering:

3.2.1 Following delivery of Architect's 50% and 90% complete Construction Documents for the full scope of intended improvements for the Project, and prior to bid(s), Construction Manager shall conduct a constructability review and value engineering of the plans and specifications and provide input to the District and the Architect relative to sequencing of construction (phases), means and methods, and duration of construction for various building methods and constructability.

3.2.2 The intent of review is to eliminate gaps, overlaps and omissions, and provide information to the Architect that will eliminate or greatly reduce issues that might otherwise result in additional cost or delay during the course of construction.

4. **CONSTRUCTABILITY REVIEW/VALUE ENGINEERING REVIEW**

4.1 Construction Manager shall perform a constructability review/value engineering review of plans at 90% complete Construction Documents using Redicheck or an equivalent acceptable checklist review technique acceptable to the District. This review shall include:

4.1.1 Senior Construction Manager analysis and overlay coordination of each major system of the building(s) including electrical, mechanical, civil, structural, kitchen, theater, acoustic, technology and landscape architecture.

4.1.2 Preparation of checklists as defined by the Redicheck methodology or equivalent technique acceptable to the District.

4.1.3 Construction Manager shall perform a systems analysis/value engineering review of each major building system utilizing a senior Construction Manager.

4.2 The constructability review/ value engineering review shall be performed independently by a senior Construction Manager from Construction Manager's office. The senior Construction Manager must be familiar with the project type represented by this Agreement.

4.3 At the completion of Construction Manager's constructability review/value engineering review and systems review/value engineering review, Construction Manager shall prepare a report documenting the findings resulting from the senior Construction Manager's review. Construction Manager shall also include as an addendum to this

report, the senior Construction Manager's red-marked corrections to the construction documents and project specifications and Redicheck documents. This document shall also be available for the District's review at Construction Manager's place of business.

4.4 Construction Manager shall confirm all agreed upon constructability review/ value engineering changes and comments are incorporated into the Construction Documents before they are issued to bidders.

4.5 If applicable, Construction Manager shall produce phase schedules for each of the component projects within the Program and a Master Schedule for the Program as a whole. These schedules shall contain key milestones to be accomplished by the Project Team including the Architects and Consultants.

4.6 Assist the District in the selection of professional services for inspection, testing, hazardous materials removal, etc.

5. FUNDING PHASE

The Construction Manager shall assist the District with the preparation and submittal of any documents necessary for obtaining and utilizing funding from the Office of Public School Construction. The Construction Manager shall assist the District in identifying, obtaining and utilizing funding from grants and any other alternative funding sources available to the District for the Project. Construction Manager shall provide the District with recommendations on available funding that can be obtained by the District for the Project.

6. PRE-QUALIFICATION OF CONTRACTORS/ SUBCONTRACTORS

6.1 Construction Manager shall assist the District and Architect in prequalification (if required by the District), the bid opening, evaluation of the bids for completeness, full responsiveness and price, including alternate prices and unit prices.

6.2 Construction Manager shall assist the District and its legal counsel in preparing prequalification documents as required under Public Contract Code section 20111.5 and/or 20111.6. If prequalification for the Project is required under Public Contract Code section 20111.6, and the Project requires work to be performed by mechanical, electrical or plumbing ("MEP") contractors (contractors that require C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43 or C-46 licenses), the Construction Manager shall confirm that all such MEP subcontractors are prequalified. Construction Manager shall ensure that a list of prequalified MEP subcontractors will be made available by the District to all bidders at least five business days prior to the bid opening date.

6.3 Construction Manager shall establish bidder prequalification procedures in compliance with the applicable statute, evaluate all prequalification documents submitted, make recommendations to the District on which contractors and/or subcontractors are deemed prequalified and issue notices to contractors and/or subcontractors regarding their prequalification status.

7. **BIDDING PHASE**

7.1 Construction Manager shall assist the District and its legal counsel in preparing the bid documents and general conditions for the Project, including, but not limited to, the bid advertisement, notice inviting bids, notice of intent to award and notice of award.

7.2 Construction Manager shall assist the District in evaluating the bid results and prior to the award of Contracts.

7.3 Construction Manager shall develop bidders' interest in the Project and establish bidding procedures and schedules. Construction Manager, with the assistance of the Architect, shall issue bidding documents to bidders and conduct pre-bid conferences with prospective bidders. Construction Manager shall assist the Architect with regard to responses to requests for information or clarification from bidders and with the issuance of addenda.

7.4 Construction Manager shall assist the District and its legal counsel in evaluating bid protests and making recommendations on whether any bid protests have merit.

7.4 Construction Manager shall prepare bid analyses and make recommendations to the District for the District's award of Contracts or rejection of bids.

8. **CONSTRUCTION PHASE**

8.1 Construction Manager shall Manage and administer related services as required to coordinate the work of the contractor.

8.2 Construction Manager shall assist in the administration of the construction Contract(s) as provided in the General Conditions of the Contract(s) for construction.

8.3 Construction Manager shall review the procedures for submittals, shop drawings, substitution requests, product samples, change orders, payment requests and other procedures and review logs, files, and other necessary documentation in order to provide an orderly and effective system for such administration.

8.4 Construction Observation. Construction Manager shall, using experienced personnel, observe the progress of the work. Construction Manager shall notify the District in writing of observations made by Construction Manager of work installed by the Contractor which does not appear to be in conformity with Contract Documents, and, after concurrence by the Architect, shall make recommendations to the District for measures to enforce compliance with the requirements of the Contract Documents.

8.5 Based on the schedule prepared by the Contractor, Construction Manager shall assist in preparing a Project Schedule for the Project, providing for the components of the work, including phasing of construction, times of commencement and completion, phasing, and the occupancy requirements of the District.

8.6 Construction Manager shall endeavor to obtain satisfactory performance from the Contractor(s). Construction Manager shall recommend courses of action to the District when requirements of the Contract Documents are not being fulfilled. Construction Manager shall monitor the approved estimate of Construction Cost.

8.7 Coordination of Technical Inspection and Testing. Construction Manager shall coordinate with the District's Project Inspector all testing required by the Architect or other third parties. All inspection reports will be provided to Construction Manager on a regular basis.

8.8 Attend the pre-construction and construction progress meetings.

8.8.1 Pre-Construction Conferences. Upon award of contracts, Construction Manager shall assist, in conjunction with the District and the Architect, in pre-construction orientation conferences for the benefit of the successful Contractor(s) and will serve to orient the Contractor(s) to the various reporting procedures and site rules prior to the commencement of actual construction.

8.8.2 Job Site Meetings. Construction Manager shall assist in regular jobsite progress meetings with the Contractor and keep meeting minutes.

8.9 Regularly monitor the construction budgets and schedules:

8.9.1 Project Schedule. Construction Manager shall continue to review the Project Schedule.

8.9.2 If requested by the District, Construction Manager shall assist the Contractor in preparing a recovery schedule. This recovery schedule shall reflect the corrective action and extraordinary efforts to be undertaken by the Contractor to recapture lost time. This recovery schedule shall be distributed to the Construction Manager, the District, the Architect and other appropriate parties by the Contractor.

8.9.3 Construction Progress Review. Construction Manager shall review the progress of construction with each Contractor, observe work in place and that materials are properly stored on a monthly basis and evaluate the percentage complete of each construction activity as indicated in the Project Schedule.

8.9.3.1 Construction Manager shall record the progress of the Project on a monthly basis or more frequently if requested by the District. Construction Manager shall document and submit written progress reports to the District and Architect including information on the Contractor and the Contractor's work on the Project, showing percentages of completion. Construction Manager shall keep a daily log containing a record of weather, each Contractor's work on the site, number of workers, identification of equipment, work accomplished, problems encountered, and other similar relevant data as the District may require.

8.9.3.2 Utilizing the schedules provided by the Contractors, Construction Manager shall update the Project Schedule incorporating the activities of the Contractor on the Project, including activity sequences and durations. The Project Schedule shall include the District's occupancy requirements showing portions of the Project having occupancy priority. Construction Manager shall update and reissue the Project Schedule as required to show current conditions. If an update indicates that the previously approved Project Schedule may not be met, Construction Manager shall recommend corrective action to the District and Architect.

8.9.3.3 As part of the monthly reporting process, Construction Manager shall provide the District with updated budget and cost tracking, to include the impact of all proposed and executed change orders.

8.9.3.4 Construction Manager shall keep regular meeting minutes.

8.10 Project Inspection Card Process.

8.10.1 The Construction Manager shall continue the established procedure to verify that the Architect, Architect's consultants, Project Inspector, Laboratory of Record and Contractor are performing services in compliance with the "Construction Oversight Process Procedure" required by the California Code of Regulations, Title 24 and as further described in DSA's PR 13-01, PR 13-02 and any other related documents and subsequent updates to such documents (unless directed otherwise by the District's Legal Counsel). As part of the procedure established under this Section, Construction Manager must be able to verify that all verified reports are being submitted to the DSA by the responsible parties in a timely manner. As part of the monthly reporting process, Construction Manager shall notify the District when the Architect, Architect's consultants, Project Inspector, Laboratory of Record or Contractor have failed to comply with the Construction Oversight Process Procedure and must inform the District of the impact such failure will have upon the Project and the Project Schedule.

8.10.2 The Construction Manager shall review the DSA approved Statement of Structural Tests and Special Inspections (Form DSA 103) for the Project prior to the continued commencement of any work on the Project in order to become familiar with the all testing and inspections that are required for the completion of the Project.

8.10.3 The Construction Manager shall meet with the Architect, Project Inspector, District, Contractor, Laboratory of Record and Special Inspectors as needed throughout the construction and completion of the Project to verify, acknowledge and coordinate the testing and special inspection program required by the DSA approved Construction Documents.

8.10.4 The Construction Manager shall coordinate with the Contractor to ensure timely requests for inspections are made and that the requirements related to the

DSA's Inspection Card Process and Form DSA 152 are being met for the Project. The Construction Manager shall notify the District, in writing, when delays or impacts to the Project Schedule are being caused by a party not complying with DSA's Inspection Card requirements and Form DSA 152.

8.10.5 After the Project has been let, all changes to the DSA approved Construction Documents shall be made by means of a Construction Change Document ("CCD") prepared by the Architect in conjunction with the Construction Manager. The Construction Manager shall review all CCD's related to the Project to determine which changes affect the Structural, Access or Fire & Life Safety (collectively "SAFLS") portions of the Project and ensure that such changes are documented and implemented through a written CCD-Category A (Form DSA 140). The Construction Manager shall verify that all CCD-Category A's are submitted to the DSA by the Architect with all supporting documentation and data and that such CCD's are approved by the DSA before work commences on the Project related to such CCD's. The Construction Manager shall verify that the District has reviewed and approved of all CCD-Category A's before they are submitted to the DSA by the Architect for review and approval. All other changes to the DSA approved Construction Documents not involving SAFLS portions of the Project are not require to be submitted to the DSA unless the DSA specifically requires such changes to be submitted to the DSA in the form of a written CCD-Category B (Form DSA 141) inclusive of all supporting documentation and data. The Construction Manager shall verify that all CCD-Category B's are submitted to the DSA by the Architect with all supporting documentation and data and that such CCD's are approved by the DSA before work commences on the Project related to such CCD's. Changes that are not determined by the Architect and/or DSA to require documentation through an approved CCD-Category A or CCD-Category B shall be documented by the Architect and Construction Manager through an alternative CCD form or other document approved by the District.

8.10.6 Interim and Final Verified Reports. The Construction Manager shall coordinate with the Project Inspector, Architect, the Architect's consultants, Special Inspector(s), Laboratory of Record and any other engineers on the Project to verify that all verified reports are timely submitted to the DSA and the District throughout the completion of the Project and prior to the Project Inspector's approval and sign off of any of the following sections on all the Project Inspection Cards (Form DSA 152) required for the construction of the Project: (1) Initial Site Work; (2) Foundation; (3) Vertical Framing; (4) Horizontal Framing; (5) Appurtenances; (6) Non-Building Site Structures; (7) Finish Site Work; (8) Other Work; or (9) Final.

8.11 Assist in the resolution of Requests for Information:

8.11.1 Throughout the Construction Phase, Construction Manager shall review communications related to Contractor's Requests for Information and shall seek

resolution for the appropriate party, providing for timely forwarding of such information to the Contractor.

8.11.2 Construction Manager shall transmit to the Architect requests for interpretations of the meaning and intent of the plans and specifications, and assist in the resolution of questions that may arise.

8.12 Review and recommend, in conjunction with the Architect, any necessary or desirable changes to any contract documents and submit same to the District:

8.12.1 Change Order Requests/ Proposals. Construction Manager shall evaluate Contractors' change order requests/ proposals and make a formal recommendation to the District regarding acceptance of the proposals for change orders.

8.12.2 Change Order Reports. Construction Manager shall prepare and distribute change order reports, on a monthly basis, throughout the Construction Phase. These reports shall provide information pertaining to proposed and executed change orders and their effect upon the contract price as of the date of the report.

8.12.2.1 Construction Manager shall review requests for changes, assist in negotiating Contractors proposals for changes in cost and/or time, submit recommendations to the Architect and the District and, if they are accepted, review change orders and Construction Change Documents prepared by the Architect which incorporate the Architect's modifications to the Construction Documents.

8.12.2.2 Construction Manager shall assist the Architect in the review and, evaluation of claims and make recommendations to the District regarding settlement of claims and assist the District in mitigating claims.

8.13 Construction Manager shall receive, review for proper limits of coverage and existence of insurance coverage and make recommendations regarding certificates of insurance and any required bonds from the contractors and forward them to the District with a copy to the Architect.

8.14 Review and approve Contractors' certificates for payment in conjunction with the Architect and Project Inspector.

8.14.1 Construction Manager shall review and make recommendations pertaining to monthly payments to the Contractor. This activity will be an integral part of the monthly progress report updates.

8.14.2 Construction Manager shall develop cash flow reports and forecasts for the Project and advise the District and Architect as to variances between actual and budgeted or estimated costs.

8.15 Maintain a copy set of Contract Documents, plans, specifications, addenda, contracts, change orders, shop drawings/submittals, correspondence, and other records, as required.

8.16 If requested, review certified payroll records submitted for the Project. Construction Manager shall also assist the District or its consultant in initiating and enforcing the District's Labor Compliance Program (if applicable), or assisting the District with complying with the Department of Industrial Relations' Compliance Monitoring Unit requirements.

8.17 Ensure that any applicable storm water pollution prevention plan requirements for the Project are incorporated into the Contract Documents and monitor compliance and maintenance by the Contractor.

8.18 If required by the Contract Documents, the Construction Manager shall confirm all waivers and releases are provided by the Contractor and all subcontractors before progress payments and final payment is made to the Contractor.

8.19 Assist in closeout, including preparation and supervision of and coordination with Architect on punch lists and evaluation of the proper time (in conjunction with Architect's opinion) for recording of a Notice of Completion:

8.19.1 Construction Manager, in conjunction with the Architect and the Inspector shall, upon Substantial Completion of the Project, assist the Architect and the District in the production of a punch list of required corrections. At the conclusion of all corrective action for all punch list items, Construction Manager shall make a final comprehensive review of the Project and will report the results of that review to the District. Construction Manager's report will indicate whether Construction Manager, the Architect, and the Project Inspector find the work performed acceptable under the Contract Documents and the relevant Project data, and will make recommendations as to final payment and the notice of completion to the Contractor.

8.19.2 Following Substantial Completion of the Project or a designated portion thereof, the Construction Manager shall evaluate the completion of the work of the Contractors and make recommendations to the Architect as to when the District may record a Notice of Completion. The Construction Manager shall assist the Architect in conducting final inspections, preparing punch-list items and confirming punch-list items are completed.

8.20 Close Out and Miscellaneous Provisions

8.20.1 Construction Manager shall perform coordination and expediting functions in connection with the Architect's and Contractor's obligation to provide "as-built" documents. Construction Manager shall confirm the Contractor is updating all required as-built document during construction and make recommendations to the Architect and District for withholding of progress

payments for failure to update the as-built documents. The Construction Manager shall assist the Architect in compiling all necessary as-built documents and incorporating them into one comprehensive set of record documents for the Project in a format acceptable and approved by the District.

8.20.2 Construction Manager shall assist the District in the delivery, storage, protection and security of District-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Project.

8.20.3 With the Architect and the District's maintenance personnel, the Construction Manager shall observe the Contractors' final testing and start-up of utilities, operational systems and equipment.

8.20.4 Construction Manager shall secure and transmit to the Architect warranties and similar submittals required by the Contract Documents for delivery to the District and deliver all keys, manuals, record drawings and maintenance stocks to the District. Construction Manager shall make recommendations for withholding or deducting payments from the Contractor for not complying with the close-out requirements and assisting the Architect in determining a reasonable value for all incomplete close-out items.

8.20.5 Construction Manager shall assist the Architect in compiling all documents and information necessary to obtain DSA close-out certification of the Project. Construction Manager shall notify the District in writing of any missing information or documents that will prevent obtaining DSA certification.

8.20.6 Construction Manager shall verify that all defective, deficient, or incomplete work identified in any Notice(s) of Non-Compliance or similar notice(s) issued by the Architect, or any inspector, special inspector, testing laboratory or governmental agency, is fully corrected and closed before the architect issues any final punch-list to the Contractor. The Construction Manager shall verify that all applicable inspectors, special inspectors, and/or engineers on the Project have visually verified that each defective, deficient and/or incomplete item of work referenced in the Notice(s) of Non-Compliance have been rectified and are closed prior to the issuance of the Architect's final punch-list to the Contractor.

8.20.7 Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the District and Construction Manager. Consent shall not be unreasonably withheld.

9. **FEE**

9.1 The fee for providing the entire scope of work described in this Agreement and Exhibits, exclusive of General Conditions, shall be three and one half percent (3½ %) of the total final project construction costs inclusive of all additive change orders and shall be paid regularly on a monthly basis based on the actual percentage of completion of the Project. Any adjustments related to the payment of fees for Construction Manager Services shall be made through a written Addendum to this Agreement approved by both parties.

9.2 The Construction Manager shall invoice all fees for Construction Manager's services set forth in the Agreement and the attached Exhibits on a monthly basis during the duration of the construction work. All invoices for Construction Manager Services shall be based upon actual work or services completed by the Construction Manager and shall be supported by proper documentation. The District shall make payments to the Construction Manager within thirty (30) days of receipt of the appropriate and approved invoice from the Construction Manager.

9.3 In the event State funding limitations or District budgetary re-alignments should result in a reduction in the scope of work to be constructed for the Project, and in the event such reduction reasonably results in a reduction of the overall duration of the Construction Manager's service, a reduction of the specified fee shall be made accordingly.

9.4 See Exhibit "B" for payment of General Conditions for the Project.

EXHIBIT "B"

GENERAL CONDITIONS & FIELD PERSONNEL

CONSTRUCTION MANAGEMENT AGREEMENT

Between

Ocean View School District

and

LEDESMA & MEYER CONSTRUCTION COMPANY, INC. (LMCCI)

Dated: October 20, 2014

1. GENERAL DESCRIPTION & CRITERIA

1.1 The Construction Manager shall provide all General Conditions for the Project that are not already in place. General Conditions for the Project are defined as those generic support activities which must be in place to support all construction aspects of the Project. The costs and schedules for all General Conditions are detailed and set forth in Attachment "1" herein.

1.2 General Conditions are not a profit center and are intended to be cost recovery only.

2. ESTIMATED COSTS

2.1 The initial budgeted amount for all current General Conditions costs, exclusive of all Construction Management fees as set forth in Exhibit "A", shall be Five Hundred Thousand Dollars (\$500,000.00). Because of the indeterminate nature of the present scope and schedule of this project, this budget may have to be increased however Construction Manager shall endeavor to keep these General Conditions costs as low as possible.

3. GENERAL CONDITIONS PAYMENT

3.1 All General Conditions items and services shall be billed at cost, and the Construction Manager shall take all reasonable steps necessary to obtain the most competitive prices available for these items. If Construction Manager desires to be reimbursed for any other General Conditions costs not specifically set forth in Attachment "1", prior to the commencement of the Construction Phase, Construction Manager shall submit a list of these General Condition items to District for District's approval. The cost of any additional items shall not be reimbursable unless advance

written authorization is provided by the District to Construction Manager to obtain the item.

3.2 Construction Manager shall invoice any all General Conditions costs monthly during the duration of the construction work. All General Condition costs must be supported by an invoice, receipt, an employee time sheet, or other acceptable documentation.

3.3 District shall make payments for General Conditions, if any, to the Construction Manager within thirty (30) days of receipt of the appropriate and approved invoice from Construction Manager.

4. **EARLY COMPLETION**

4.1 If the Project is completed earlier than as set forth in the terms of this Agreement, then all General Conditions costs set forth in Attachment "1" shall cease within thirty (30) days after the date the Project is completed.

ATTACHMENT "1"

GENERAL CONDITIONS AND COSTS/ SCHEDULE

Hourly billing rates for personnel working on this project are as follows:

- Principal (Kris Meyer or Joseph Ledesma) = \$180 per hour
- Project Director (Tom Smith or Larry Flickinger) = \$160 per hour
- Superintendents = \$125 per hour
- Project Coordinator = \$100 per hour
- Project Estimator = \$100 per hour

Costs for field overhead costs for the following items will be reimbursed at their actual costs without mark-up unless otherwise noted:

- Temporary construction management trailer
- Temporary toilet facilities
- Field office supplies
- Field office equipment
- Travel mileage to, between, & from sites (\$250 per week per vehicle)
- Subsistence

EXHIBIT “C”

PROPOSED PROJECT SCHEDULE

(to be mutually determined by District and Construction Manager on a per-site basis)