INDEPENDENT CONSULTANT AGREEMENT

DESERT SANDS UNIFIED SCHOOL DISTRICT

CONSTRUCTION MANAGEMENT SERVICES
LEDESMA & MEYER CONSTRUCTION COMPANY, INC.

DEFERRED MAINTENANCE PROJECTS – GROUP 1

APRIL 12, 2022

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AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

This Agreement for Construction Management Services ("Agreement") is made as of April 12, 2022, between the Desert Sands Unified School District, a California public school district ("District"), and Ledesma & Meyers Construction Company, Inc. ("Construction Manager") (both collectively "Parties"), for the following project ("Project"):

2022-2023 Deferred Maintenance Projects – Group 1

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

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

ARTICLE 1. Definitions

1.1 In addition to the definitions above, the following definitions for words or phrases shall apply when used in this Agreement, including all Exhibits:

1.1.1 **Agreement**: The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.

1.1.2 **Architect**: The architect(s) that the District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s).

1.1.3 **As-Built Drawings ("As-Builts")**: Any document prepared and submitted by District Contractor that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by Construction Change Documents and change orders, and detailed by the District's construction Contractor on a Conforming Set.

1.1.4 **Board**: The District's Governing Board.

1.1.5 **Conforming Set**: The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase.

1.1.6 **Construction Budget**: The total amount indicated by the District for the Project plus all other costs, including design, construction, administration, financing, and all other costs.

1.1.7 **Construction Change Documents ("CCD"):** The documentation of changes to the DSA-approved construction documents.

1.1.8 **Construction Cost Budget**: The total cost to District of all elements of the Project specified by the District. The Construction Cost Budget does not include the compensation of the Project Design Team, the Program Manager (if any), the Construction Manager and any subconsultants, the cost of the land, rights-of-way, or financing which are the responsibility of the District.

1.1.9 **Construction Manager**: The entity listed in the first paragraph of this Agreement.

1.1.10 **Consultant(s)**: Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Construction Manager.

1.1.11 **Contractor**: One or more licensed and registered contractors under contract with the District for construction of all or a portion of the Project.

1.1.12 **Design Team**: The Architect(s) that the District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s), plus all engineer(s) or other designer(s), who have a responsibility to the District to design all or a portion of the Project either directly or as a subconsultant or subcontractor.

1.1.13 **DIR:** California Department of Industrial Relations.

1.1.14 **DSA:** Division of the State Architect in the California Department of General Services.

1.1.15 **Extra Services**: District-authorized Services outside of the scope in **Exhibit "A"** or District-authorized reimbursables not included in Construction Manager's fee.

1.1.16 **Fee**: The Construction Manager's Fee is defined in Section 6.1, payable as set forth in Article 6 and in **Exhibit "D."**

1.1.17 **District's Representative**: The individual identified herein that is authorized to act on the District's behalf with respect to the Project. The initial District's Representative shall be Patrick Cisneros. District may change the District's Representative by notice as set forth herein.

1.1.18 **Program Manager:** Any program manager hired to perform program management services for the District, including all Consultant(s) to the Program Manager. If no Program Manager is hired by the District for the Project, then all references to "Program Manager" shall be read and interpreted as the District.

1.1.19 **Project Inspector, Inspector of Record, IOR:** The agent of the DSA at the project site whose primary responsibility will be to insure that the project is constructed in compliance with current codes; DSA-approved plans and specifications relating to fire life safety, structure, and accessibility; and quality controls required of a public works facility. The IOR will report to both the DSA and the Architect.

1.1.20 **Record Drawings:** A final set of drawings prepared by the Architect that incorporates all changes from all As-Builts, sketches, details, and clarifications.

1.1.21 **Service(s):** All labor, materials, supervision, services, tasks, and work that the Construction Manager is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of the Project.

ARTICLE 2. Scope, Responsibilities And Services Of Construction Manager

2.1 **Scope:** Construction Manager shall provide the Services described herein and under **Exhibit "A"** for the Project. The District reserves the right to change this structure and/or utilize other delivery methods.

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

2.3 **Construction Manager's Services:** Construction Manager shall act as the District's agent to render the services and furnish the work as described in **Exhibit "A,"** which will commence upon the receipt of a Notice to Proceed signed by the District representative. Construction Manager's services will be completed in accordance with the schedule attached as **Exhibit "C."**

2.4 During the Construction Phase of the Project, the District may require that the Contractors submit all notices and communication relating to the Project directly to the Construction Manager.

2.5 **Review of Measure KK:** Construction Manager shall review Measure KK and other written materials made available by the District to Construction Manager which relate to Measure KK to fully understand the extent of funding available to implement the project.

ARTICLE 3. Construction Manager Staff

3.1 The Construction Manager has been selected to perform the work herein because of the Construction Manager's skills and expertise.

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

Corporate Principal:	Joseph Ledesma
Project Executive Director:	Tim Ledesma
Project Manager:	To be determined
Superintendent:	Cameron Mattson
Superintendent:	Joe Ellis
Superintendent:	Brock Mendenhall
Superintendent:	Marcelino Alfacro (as available)
Project Coordinator:	Robin Weise

3.3 The Construction Manager shall not change any of the key personnel listed above without prior written approval by District, unless said personnel cease to be employed by Construction Manager. Regardless of the reason for the change in key personnel, District shall be allowed to interview and approve replacement personnel.

3.4 If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice by the District, the Construction Manager shall immediately remove that person from the Project and provide a temporary replacement. Within seven (7) days of such removal, Construction Manager shall provide a permanent replacement person acceptable to the District. All lead or key personnel for any Consultant must also be designated by the Consultant and are subject to all conditions stated in this Agreement.

3.5 Construction Manager represents that the Construction Manager has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of services required under this Agreement and that no person having any such interest shall be employed by Construction Manager.

ARTICLE 4. Schedule Of Work

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

ARTICLE 5. Construction Cost Budget

5.1 The Construction Manager shall have responsibility, to develop, review, and reconcile the Construction Cost Budget with the Architect and the District throughout the design process and construction.

5.2 The Construction Cost Budget shall be the total cost to District of all elements of the Project designed or specified by the Project design professional(s), as defined in Article 1.

5.3 Construction Manager shall work cooperatively with the Project Design Team (if applicable) throughout the Project, so that the construction cost of the work will not exceed the Construction Cost Budget, as may be adjusted subsequently with the District's written approval. The Construction Manager shall notify the District if it believes the construction cost of the work will exceed the Construction Cost Budget, and/or if it believes the construction cost of the Project will exceed the Construction Cost Budget for the Project.

5.4 Evaluations of the District's Construction Budget, and preliminary and detailed cost estimates prepared by the Construction Manager, represent the Construction Manager's best judgment as a professional familiar with the construction industry.

5.5 If the Bidding Phase has not commenced within ninety (90) days after DSA approval, the Construction Cost Budget may be adjusted at District's request to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the District and the date on which proposals are sought.

5.6 The District may, in its sole discretion, do one, or a combination, of the following if any of the events in Article 5.7 occur:

5.6.1 Give Construction Manager written approval of an agreed adjustment to the Construction Cost Budget.

5.6.2 Authorize Construction Manager to re-negotiate, when appropriate, and/or re-bid the Project within three (3) months time of receipt of bids (exclusive of District and other agencies' review time) at no additional cost to the District.

5.6.3 Terminate this Agreement if the Project is abandoned by the District, without further obligation by either party.

5.6.4 Within three (3) months of receipt of bids, instruct Design Team to revise the drawings and specifications (in scope and quality as approved by the District) to bring the Project within the Construction Cost Budget for re-bidding with Construction Manager performing cost estimation, value engineering, constructability reviews, and/or bidding support at no additional cost to the District.

5.7 If any of the following events occur, the District may exercise any one, or any combination, of the actions set forth in Article 5.6 above:

5.7.1 The lowest responsive base bid received is five percent (5%) or more in excess of the Construction Cost Budget or

5.7.2 If the combined total of base bid and all additive alternates come in ten percent (10%) or more under the Construction Cost Budget; or

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

ARTICLE 6. Fee And Method Of Payment For Basic Services

6.1 District shall pay Construction Manager a **Fee of One Hundred and Forty-Six thousand and One Hundred and Fifty-Eight Dollars ($146,158)** in accordance with the Fee Schedule set forth in **Exhibit "D."**

6.2 District shall pay Construction Manager the Fee pursuant to the provisions herein and in **Exhibit "D."**

6.3 Construction Manager shall bill its work under this Agreement on a percent of completion basis in accordance with **Exhibit "D."**

6.4 No increase in fee will be due to Construction Manager from change orders generated during the construction project.

6.5 The Construction Manager's fee set forth in this Agreement shall be full compensation for all of Construction Manager's Services incurred in the performance hereof as indicated in **Exhibit "D,"** including, without limitation, all costs for personnel, travel, offices, per diem expenses.

ARTICLE 7. Payment for Extra Services

7.1 Any charges for Extra Services shall be paid by the District as described in **Exhibit "B"** at the rates set forth in **Exhibit "D"** only upon certification that the claimed Extra Services were authorized in writing in advance by the District and that the Extra Services have been satisfactorily completed.

7.2 A written proposal describing the proposed scope of services and listing the personnel, labor duration, rates, and cost shall be submitted by the Construction Manager to the District for written approval before proceeding with any Extra Services.

ARTICLE 8. Ownership Of Data

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

8.2 Upon request of the District, the Construction Manager shall make available to the District all work product completed or in progress at the time of such a request.

8.3 After completion of the Project or, if the District exercises the right to terminate this Agreement pursuant to the terms hereof, after termination of this Agreement, Construction Manager shall assemble and deliver to District all of the work product of the Construction Manager generated, prepared, reviewed or compiled in connection with this Agreement and the Services and authorized Extra Services hereunder. This includes, without limitation, a complete set of Project records, including without limitation all documents generated by Construction Manager, copies of all documents exchanged with or copied to or from all other Project participants, and all closeout documents. Said Project records shall be indexed and appropriately organized for easy use by District personnel.

8.4 All Project records are property of the District, whether or not those records are in the Construction Manager's possession. District retains all rights to all copyrights, designs and other intellectual property

embodied in the plans, record drawings, specifications, estimates, and other documents that Construction Manager or its Consultants prepare or cause to be prepared pursuant to this Agreement, but Construction Manager and its Consultants shall be entitled to reuse work product generated under this Agreement.

ARTICLE 9. Termination Of Contract

9.1 If Construction Manager fails to perform Construction Manager's duties to the satisfaction of the District, or if Construction Manager fails to fulfill in a timely and professional manner Construction Manager's material obligations under this Agreement, or if Construction Manager shall violate any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement effective immediately upon the District giving written notice thereof to the Construction Manager. In the event of a termination pursuant to this subdivision, Construction Manager may invoice District for all work performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of Construction Manager's actions, errors, or omissions.

9.2 District shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Construction Manager may invoice District and District shall pay all undisputed invoice(s) for work performed until the notice of termination. This shall be the only amount(s) potentially owing to Construction Manager if there is a termination for convenience.

9.3 The Construction Manager has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement and fails to cure such material default within sixty (60) days of receipt of written notice of said defaults, or if the default cannot be cured within sixty (60) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from Construction Manager. Such termination shall be effective after receipt of written notice from Construction Manager to the District.

9.4 Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.

9.5 If, at any time in the progress of the Project, the District determines that the Project should be terminated, the Construction Manager, upon written notice from the District of such termination, shall immediately cease work on the Project. The District shall pay the Construction

Manager only the fee associated with the services provided and approved by District since the last paid invoice and up to the notice of termination.

9.6 If the Project is suspended by the District for more than one hundred and eighty (180) consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the schedule shall be adjusted and the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Construction Manager's services. Upon resumption of the Project after suspension Construction Manager shall make every effort to maintain the same Project personnel.

ARTICLE 10. Indemnity

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

10.2 Construction Manager shall pay and satisfy any judgment, award, or decree that may be rendered against the Indemnified Parties in any Claim. Construction Manager's obligation pursuant to Article 10.1 includes reimbursing the District for the cost of any settlement paid by the Indemnified Parties and for any and all fees and costs, including but not limited to legal fees and costs, expert witness fees, and consultant fees, incurred by the Indemnified Parties in the defense of any Claim(s) and to enforce the indemnity herein. Construction Manager's obligation to indemnify shall not be restricted to insurance proceeds. District shall also have the right to accept or reject any legal representation that Construction Manager proposes to defend the Indemnified Parties.

10.3 District may withhold any and all costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Construction Manager from amounts owing to Construction Manager.

ARTICLE 11. Conduct on Project Site and Fingerprinting

11.1 Unacceptable and/or loud language will not be tolerated. "Cat calls" or other derogatory language toward students or public will not be allowed.

11.2 Drugs, alcohol, and smoking on District property are strictly prohibited. No drugs, alcohol and/or smoking are allowed at any time in any building and/or grounds on District's property. No students, staff, visitors or contractors are to use drugs on District's property.

11.3 Unless the District has determined pursuant to Education Code section 45125.2 that on the basis of the scope of work in this Agreement that Construction Manager and its subcontractors and employees will have only limited contact with pupils, the Construction Manager shall comply with the provisions of Education Code section 45125.01 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Construction Manager shall not permit any employee to have any contact with District pupils until such time as the Construction Manager has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Construction Manager's responsibility shall extend to all employees, agents, and employees or agents of its subcontracts regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Construction Manager. Verification of compliance with this section and the Criminal Background Investigation Certification (**Exhibit "E"**) shall be provided in writing to the District prior to each individual's commencement of employment or participation on the Project and prior to permitting contact with any student.

ARTICLE 12. Responsibilities Of The District

12.1 The District shall examine the documents submitted by the Construction Manager and shall render decisions so as to avoid unreasonable delay in the process of the Construction Manager's services.

12.2 The District shall provide to the Construction Manager as complete information as is available to District regarding the District's requirements for the Project.

12.3 The District shall retain design professional(s) whose services, duties and responsibilities shall be described in written agreement(s) between the District and design professional(s).

12.4 Unless the contract documents require that Contractor provide any of the following, the District shall, in a timely manner, and with Construction Manager's assistance, secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, subject to Construction Manager's and/or the design professional(s) duties to recommend or provide same.

12.5 The District, its representatives, and consultants shall communicate with the Contractor either directly or through the Construction Manager.

12.6 The District shall designate an officer, employee and/or other authorized representatives to act on the District's behalf with respect to the Project. The District's representative for the Project shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

ARTICLE 13. Liability Of District

13.1 Other than as provided in this Agreement, District's obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

13.2 Any and all costs incurred by District, or for which District may become liable, to the extent caused by negligent delays, acts, or omissions of Construction Manager in its performance hereunder, shall be paid to District by Construction Manager as provided for herein and/or under California law.

13.3 District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Construction Manager, or by its employees, even though such equipment be furnished or loaned to Construction Manager by District.

13.4 The Construction Manager hereby waives any and all claim(s) for recovery from the District under this Agreement, which loss or damage is covered by valid and collectible insurance policies. Construction Manager agrees to have its required insurance policies endorsed to prevent the invalidation of insurance coverages by reason of this waiver. This waiver shall extend to claims paid, or expenses incurred,

by Construction Manager's insurance company on behalf of the District.

ARTICLE 14. Insurance

14.1 Construction Manager shall procure prior to commencement of the work of this Agreement and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Construction Manager, their agents, representatives, employees and sub-consultant(s).

14.2 **Minimum Scope and limits of Insurance**: Coverage shall be at least as broad as the following scopes and limits:

14.2.1 **Commercial General Liability.** one million dollars ($1,000,000) per occurrence for bodily injury, personal injury ,property damage, death, advertising injury, and medical payments arising from the performance of any portion of the Services. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

14.2.2 **Commercial Automobile Liability, Any Auto**. one million dollars ($1,000,000) per occurrence for bodily injury and property damage and two million dollars ($2,000,000 general aggregate for bodily injury and property damage.

14.2.3 **Workers' Compensation**. Statutory limits required by the State of California.

14.2.4 **Employer's Liability.** one million dollars ($1,000,000) per accident for bodily injury or disease.

14.2.5 **Professional Liability**. This insurance shall cover the Construction Manager and its sub-consultant(s), if any, for one million dollars ($2,000,000) aggregate limit subject to no more than five thousand dollars ($5,000) per claim deductible, coverage to continue through completion of construction plus two years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.

14.3 The District reserves the right to modify the limits and coverages described herein, with appropriate credits or charges to be negotiated for such changes.

14.4 **Deductibles and Self-Insured Retention**: Any deductibles or self-insured retention exceeding seven thousand five hundred ($7,500) must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers; or the Construction Manager shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

14.5 **Other Insurance Provisions**: The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

14.5.1 All policies except for the professional liability insurance policy shall be written on an occurrence form.

14.5.2 The District, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Construction Manager; instruments of service and completed operations of the Construction Manager; premises owned, occupied or used by the Construction Manager; or automobiles owned, leased, hired or borrowed by the Construction Manager. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

14.5.3 Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

14.5.4 The Construction Manager's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

14.5.5 Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

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

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

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

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

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

ARTICLE 15. Nondiscrimination

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

ARTICLE 16. Covenant Against Contingent Fees

Construction Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Construction Manager, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Construction Manager, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the contract price or consideration or otherwise recover the full amount of such fee, commission, percentage fee, gift, or contingency.

ARTICLE 17. Entire Agreement/Modification

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

ARTICLE 18. Non-Assignment Of Agreement

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

ARTICLE 19. Law, Venue

19.1 This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.

19.2 The county in which the District's administration office is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

ARTICLE 20. Alternative Dispute Resolution

20.1 Notwithstanding any disputes, claims or other disagreements between the Construction Manager and the District, the Construction Manager shall continue to provide and perform Services hereunder pending a subsequent resolution of such disputes.

20.2 All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. If this method proves unsuccessful, then all claims, disputes or controversies as stated above may be decided through arbitration, if agreed to by all Parties.

ARTICLE 21. Severability

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

ARTICLE 22. Employment Status

22.1 Construction Manager shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which the Construction Manager performs the Services which are the subject matter of this Agreement; provided always, however, that the Services to be provided by Construction Manager shall be provided in a manner consistent with all applicable standards and regulations governing such Services.

22.2 Construction Manager understands and agrees that the Construction Manager's personnel are not and will not be eligible for: membership in, or to receive any benefits from, any District group plan for hospital, surgical or medical insurance; membership in any District retirement program; paid vacation, paid sick leave or other leave, with or without pay; or any other benefits which accrue to a District employee.

22.3 Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Construction Manager or any employee of Construction Manager is an employee of District for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Construction Manager which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.

22.4 Should a relevant taxing authority determine a liability for past services performed by Construction Manager for District, upon notification of such fact by District, Construction Manager shall promptly remit the amount due or arrange with District to have the amount due withheld from future payments to Construction Manager under this Agreement (again, offsetting any amounts already paid by Construction Manager which can be applied as a credit against that liability).

22.5 A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Construction

Manager shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Construction Manager is an employee for any other purpose, then Construction Manager agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Construction Manager was not an employee.

22.6 Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

ARTICLE 23. Warranty Of Construction Manager

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

23.2 Construction Manager certifies that it is aware of the provisions of the Labor Code of the State of California, that require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that, if applicable, it will comply with those provisions before commencing the performance of the work of this Agreement.

23.3 Construction Manager certifies that it is aware of the provisions of California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Since the Construction Manager is performing work as part of an applicable "public works" or "maintenance" project, and since the total compensation is $1,000 or more, the Construction Manager agrees to fully comply with and to require its sub-consultant(s) to fully comply with all applicable prevailing wage requirements of the California Labor Code. Since this Project is subject to labor compliance and enforcement by the DIR, Construction Manager specifically acknowledges and understands that it shall perform the Services while complying with all applicable provisions of Division 2, Part 7, Chapter 1, of the Labor Code and Title 8 of the California Code of Regulations.

ARTICLE 24. Cost Disclosure - Documents And Written Reports

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

ARTICLE 25. Communications / Notice

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

If to District:
Desert Sands Unified School District
47-950 Dune Palms Road
La Quinta, CA 92253
Telephone: 760/771-8507
Facsimile: 760/771-8522
Email: jordan.aquino@desertsands.us

Attn: Jordan Aquino

With a copy to:

DANNIS WOLIVER KELLEY
275 Battery Street, Suite 1150
San Francisco, CA 94111
Attention: Deidree Sakai
Telephone: (415) 543-4111
Facsimile: (415) 543-4384

If to Construction Manager:
Ledesma & Meyer Construction Company, Inc.
9441 Haven Avenue
Rancho Cucamonga, CA 91730
Telephone: 909/476-0590
Facsimile: 909/476-0592
Email: joel@lmcci.com

Attn: Joseph Ledesma

With a copy to:

_____

_____

_____

Telephone:
Facsimile:

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

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

ARTICLE 26. Not used

ARTICLE 27. Other Provisions

27.1 The Construction Manager shall be responsible for the cost of construction change orders caused directly by the Construction Manager's willful misconduct or negligent acts, errors or omissions. Without limiting Construction Manager's liability for indirect or consequential cost impacts, the direct costs for which the Construction Manager shall be liable shall equal its proportionate share of the difference between the cost of the change order and the reasonable cost of the work had such work been a part of the originally prepared construction documents.

27.2 Neither the District's review, approval of, nor payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Construction Manager shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Construction Manager's failure to perform any of the services furnished under this Agreement to the standard of care of the Construction Manager for its Services, which shall be, at a minimum, the standard of care of construction managers performing similar work for California public school districts at or around the same time and in or around the same geographic area of the District.

27.3 Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.

27.4 The individual executing this Agreement on behalf of Construction Manager warrants and represents that she/he is authorized to execute this Agreement and bind the Construction Manager to all terms hereof.

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

DESERT SANDS UNIFIED SCHOOL DISTRICT

Date: _____, 2022

Signed: _____

By: Jordan Aquino

Title: Assistant Superintendent, Business Services

LEDESMA & MEYERS CONSTRUCTION CO., INC.

Date: APRIL 7, 2022

Signed: _____

By: JOSEPH M. LEDESMA

Title: CEO

EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER

1. BASIC SERVICES
2. GENERAL PROJECT SERVICES
3. PRECONSTRUCTION PHASE
4. PRE-BID PHASE
5. BIDDING PHASE
6. CONSTRUCTION PHASE
7. PROJECT COMPLETION
8. FINAL DOCUMENTS
9. WARRANTY

EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER

Construction Manager shall provide professional services necessary for completing the following:

1. BASIC SERVICES

1.1. Provide work which shall comply with professional standards and applicable requirements of federal, state, and local law.

1.2. Monitor and advise the District as to all material developments in the Project. Maintain reporting systems for scope, sequencing, scheduling, budgets and communication for the Project using existing District software, when requested by the District.

1.3. Be the focal point of all communication to and from construction Contractor(s).

1.4. Implement methods to budget and track all expenditures on the Project. Construction Manager shall generate monthly reports to the District reflecting this information, and shall maintain the District's financial reporting systems, when requested by the District.

1.5. Prepare methods to track and report on schedule status for the Project. Construction Manager shall develop master schedules and milestone schedules for the Project, and shall report on same each month to the District.

1.6. The Construction Manager will be required to attend and provide updates at Board meetings as requested by the District. The Construction Manager shall work cooperatively with District to anticipate and maintain a schedule of upcoming Board information and action items and shall prepare reports, background materials, and preliminary materials in District-specified format.

1.7. Construction Manager shall work cooperatively with the Design Team and the District to:

1.7.1. Define and schedule the Project.

1.7.2. Provide Services that will result in the development of an overall Project strategy with regard to phases, construction schedules, timing, budget, prequalification, contactor procurement, construction materials, building systems, and equipment.

1.8. Perform constructability reviews, determine construction feasibility, availability of materials and labor, time requirements for installation and construction, and factors related to cost, including costs of alternative designs, of materials,

preliminary budgets, and possible economies.

1.9. Interface with the Contractor and all subcontractors all general and/or trade Contractors during construction to ensure that the District is provided with an acceptable Project and the best value.

1.10. Advise the District as to the regulatory agencies that have jurisdiction over any portion or all of the Project, and as to coordination with and implementation of the requirements of the regulatory agencies, including without limitation DSA.

1.11. Contract for or employ, at Construction Manager's expense, sub-consultant(s) to the extent deemed necessary for Construction Manager's services. Nothing in the foregoing shall create any contractual relationship between the District and any sub-consultant(s) employed by the Construction Manager under terms of this Agreement.

1.12. Cooperate with the District, Board, and other professionals employed by the District for the design, coordination or management of other work related to the Project, including District staff and consultants, project manager(s), citizens' oversight committee, other District committees, and the community to facilitate the timely completion of the Project within Board-approved budgets and to District design standards.

1.13. Chair, conduct and take minutes of periodic meetings between District and its design professional(s), the Site Committee meetings, and construction meetings during the course of the Project. Construction Manager shall invite the District and/or its representative and the Project Inspector to participate in these meetings. Construction Manager shall keep meeting minutes to document comments generated in these meetings.

1.14. Develop for District approval a Project time schedule at the start of Project development that does the following:

1.14.1. Provides sufficient time for prequalification, and if necessary the resolution of any appeals, bidding, and, if necessary, rebidding, or negotiating if applicable, the Project;

1.14.2. Coordinates and integrates the design professional(s)' design efforts with bidding schedules;

1.14.3. Includes realistic activity sequences and durations, allocation of labor and materials and delivery of products requiring long lead-time procurement; and

1.14.4. Takes into account the District's occupancy requirements (showing portions of the Project having occupancy priority and ongoing

operational occupancy requirements).

1.15. Be responsible for the professional quality and technical accuracy of all cost estimates, constructability reviews, studies, reports, projections, opinions of the probable cost of construction, and other services furnished by Construction Manager under this Agreement as well as coordination with all Master Plans, studies, reports and other information provided by District to Construction Manager. Construction Manager shall, without additional compensation, correct or revise any errors or omissions in materials it generates.

1.16. Maintain a log of all meetings, site visits or discussions held in conjunction with the work of the Project, with documentation of major discussion points, observations, decisions, questions or comments. These shall be furnished to the District and/or its representative for inclusion in the overall Project documentation.

1.17. Coordinate transmittal of documents to regulatory agencies for review and advise the District of potential problems in completion of such reviews.

1.18. Prepare a bidders list for each bid package for approval by the District.

1.19. Assist the District in pre-qualifying bidders if prequalification is permitted or required by the District. This service shall include the following:

1.19.1. Preparation and distribution of prequalification questionnaires;

1.19.2. Receiving and analyzing completed questionnaires;

1.19.3. Interviewing possible bidders, references, bonding agents and financial institutions;

1.19.4. Preparing recommendations for the District; and

1.19.5. Assisting with resolution of any appeals.

1.20. Conduct a telephonic and correspondence campaign to attempt to increase interest among qualified bidders.

1.21. Assist the District in preparing and placing notices and advertisements to solicit bids for the Project.

1.22. Coordinate the delivery of Bid Documents to the bidders. The District shall obtain the District-approved contract documents from the design professional(s) and the Construction Manager shall arrange for printing (when applicable), binding, wrapping, and delivery to the bidders. The Construction Manager shall maintain a list of bidders receiving contract documents. Construction Manager

must coordinate with the District for the use of paperless distribution of bid documents.

1.23. Provide documentation, pictures, and other information and assistance to the District for the District's use on a website, and as otherwise necessary, for public access to show Project status.

1.24. Coordinate submission of electronic certified payroll records directly to the DIR for labor compliance program, if applicable.

1.25. Comply with any storm water management program that is approved by the District and applicable to the Project, at no additional cost to the District.

1.26. Ensure that Contractor, all subcontractor(s), Consultants, and sub-consultant(s) comply with any District-approved storm water management program that is applicable to the Project, at no additional cost to the District.

1.27. Provide direction and planning to ensure Project adherence to applicable environmental requirements such as those emanating from the Environmental Protection Agency ("EPA"), Cal/EPA, the California Environmental Quality Act ("CEQA"), Air Quality Management District and State of California and Regional Water Quality Control Board laws, regulations and rules. The Construction Manager shall comply with, and ensure that all Consultants, the Contractors and subcontractors, and all design professionals and their sub-consultants comply with, any storm water pollution prevention plans, other storm water management program and other environmental impact mitigation requirements that are approved by the District and applicable to the Project, at no additional cost to the District.

1.28. Maintain accurate Project cost accounting records, using GAAP, on authorized work performed under unit costs, actual costs for labor and material, or other basis for maintaining required accounting records. Construction Manager shall provide accounting records to the District on a monthly basis, or as reasonably requested by District. Construction Manager shall afford the District access to these records and preserve these records for a period of three (3) years after final payment, at no cost to the District.

1.29. Assist Architect (if applicable) with the preparation of an estimate of costs for all addenda and coordinate with Architect to submit the estimate to the District for approval. Assist and coordinate with Architect as required to adjust the Construction Cost Budget and other Project costs as indicated in this Agreement.

1.30. Provide and maintain a management presence on the Project site(s).

1.31. Construction Manager is **NOT** responsible for:

1.31.1. Ground contamination or hazardous material analysis.

1.31.2. Any asbestos testing, design or abatement; however, it shall coordinate and integrate its work with any such information provided by District.

1.31.3. Compliance with the California Environmental Quality Act ("CEQA"), except that Construction Manager agrees to coordinate its work with that of any CEQA consultants retained by the District, and the work of Contractor and the Design Team to provide current information for use in CEQA compliance documents and to identify and carry out mitigation measures.

1.31.4. Historical significance report.

1.31.5. Soils investigation.

1.31.6. Geotechnical hazard report.

1.31.7. Topographic survey, including utility locating services.

2. GENERAL PROJECT SERVICES

2.1. **General**: Monitor and advise the District as to all material developments on the Project. Construction Manager shall implement with District approval reporting methods developed by Program Manager for schedules, cost and budget status. The Construction Manager shall be the focal point of all communication to and from construction Contractor and shall be copied on all communications between the District and its design professional(s).

2.2. **Scheduling**: Track and report on schedule status for Project using methods developed by the District. The Construction Manager shall develop Project master schedules and milestone schedules, and review and approve Contractor project schedules and milestone schedules for the project per specifications, and shall report on same each month to the District.

2.3. Develop a critical path method bid and construction schedule for the project, and update every two (2) weeks or on a monthly basis as a minimum.

2.4. **Cost Controls**: Implement methods to track construction expenditures on the Project. The Construction Manager shall generate monthly reports to the District reflecting this information.

2.5. **Communications to Board**: The Construction Manager may be required to attend Board meetings, and to provide updates at each meeting.

3. PRECONSTRUCTION PHASE

3.1. Provide overall coordination of the Project; serve as the focal point of communication, transmitting information to the District and Design Team on general aspects of the Project, including planning, scheduling, cost management, progress reporting, design review, dispute resolution, and documentation. Communications from the construction Contractor to the District and Design Team shall be through the Construction Manager. The Construction Manager shall receive simultaneous copies of all written communications from the District or the Design Team to the construction Contractor.

3.2. Assist with the detailed definition of project scope, budget, and schedule, as needed. Review and reconcile cost estimates from the assigned architect and coordinate peer review estimates when requested by the District. Organize and segregate bid packages for maximum cost effectiveness for the District. Present recommendations for bid packages to the District for approval, prior to bidding. Bid packages must align and be reconciled to the approved construction budget for the project. Advise the District regarding owner-supplied equipment and other potential cost-saving measures.

3.3. Assist the District in the solicitation and retention of design and engineering consultants, and coordinate design consultants' activities and delivery schedules, as needed.

3.4. Provide value engineering and life cycle cost analysis as often as requested by the District.

3.5. Provide design-phase services in conjunction with the architecture firms awarded the Project by the District. Work with the Architect (if applicable) to conform and refine designs to correlate designs to budget and scope of work outlined by the District. Review design documents for constructability, scheduling, consistency, and coordination during schematic and design development phases of work. Perform constructability reviews at various stages of design, and as necessary prior to bidding the project. Constructability reviews shall not be limited to any one particular phase of design documents or construction documents. Assist with verification of site conditions. Expedite design reviews, including modifications. Keep accurate documentation of all discussions with users regarding scope and resolution.

3.6. Prepare and maintain a Construction Management schedule for the Project. Prepare a procurement plan, where required.

3.7. Monitor and report to the District on status of design and state approval in relation to the schedule for the Project. Assist in identifying and obtaining all necessary approvals.

3.8. Solicit proposals, evaluate, and recommend other professional consultants needed to complete the Project, when requested by the District.

3.9. Implement District-approved implementation procedures, forms and reporting requirements for the Project that involve all members of the Project team, including the District, design professional(s), and construction Contractor(s).

3.10. Work with the Design Team and District to develop the final sizes, choice of materials, services and utilities and other detailed design and performance criteria of the Project.

3.11. Provide value engineering at the Schematic Design, along with a cost benefit analysis and at the Design Development Phase. This evaluation will consist of a review of the proposed materials, equipment, systems and other items depicted in the design documents and shall be coordinated with the District's design guidelines and design professional(s). The Construction Manager will prepare a value engineering report documenting the results of the evaluation and make recommendations to the District with respect to alternatives, deletions, or amendments of such proposed items that pertain to the anticipated construction costs, useful life, maintenance and operational costs and efficiencies. The Construction Manager shall provide to the District value engineering recommendations and cost/benefit analysis of those recommendations.

3.12. Not used.

3.13. Develop master bid/award schedule(s) including construction milestones for the Project through the completion of construction, as directed by the District, in coordination with design professional(s) and advise and consult with the District. Construction Manager shall review and approve construction Contractor's schedules, but shall not dictate any construction Contractor's means and/or methods of performance.

3.14. Establish schedules for any Consultant, and for any hazardous materials or other testing, and review costs, estimates, and invoices of each.

3.15. Implement a management control system to support such functions as planning, organizing, scheduling, budgeting, reporting progress, and identifying and documenting problems and solutions for the Project. Prepare monthly progress reports for the District regarding the schedule for the Project.

3.16. Organize an initial planning workshop to create baseline parameters for the Project, to define overall building requirements, Project strategy, conceptual

budget and schedule. Pursuant to understandings reached at these meetings, Construction Manager will develop an implementation plan that identifies the various phases of the Project, coordination among phases, and budget and time constraints for each phase of the Project. The plan will include a detailed strategy, master budget and master schedule as well as identification of critical events and milestone activities.

3.17. Provide updated cost estimates for the Project at the Schematic Design, Design Development, and Construction Documents Phases (if applicable) as directed by District; coordinate with design professional(s) and District and reconcile cost estimates with design professional(s)' estimates.

3.18. Advise District regarding "green building" technology and provide lifecycle costing, when applicable, and as often as requested by the District.

3.19. Fully coordinate all changes requested by any utility company needed to complete the Project.

3.20. Review and tailor the District's front end documents for the Project. Recommend the number of days required for the construction phase (and any sub-phases, such as hazardous material abatement) and recommend the amount of the liquidated damages.

4. PRE-BID PHASE

4.1. Develop master schedules and construction schedules for the Project. Develop budget(s) for the Project based on construction cost estimates.

4.2. In consultation with the District and according to District-approved policies, procedures, and standards, implement procedures, forms, and reporting requirements for the Project. Establish, accordingly, a communications procedure for the Project that allows for decision making at appropriate levels of responsibility and accountability.

4.3. Work with the design professional(s) (if applicable) to modify or add to standard, special, or general conditions for contract documents that might be needed for unique Project or contract conditions, for the District's approval, and/or assist in the development of documents necessary for the bidding phase.

4.4. Make recommendations for development and implementation of procedures to comply with applicable bidding requirements for the Project as applicable and for expediting completion of the bidding process for the Project. The scope of the foregoing includes without limitation, recommendations of Construction Manager with respect to: (a) pre-qualification of potential contractors; and (b) alternative construction delivery approaches for the Project, including consideration of a single general contractor and/or multiple prime contracting

approach to construction for the Project.

4.5. Assign responsibilities for safety precautions and programs; temporary project facilities; and equipment, materials and services for common use of Contractors. Verify that the requirements and assignment of responsibilities are included in the contract documents.

4.6. Review the Drawings and Specifications (if applicable) to provide that (a) the work of separate contractors is coordinated, (b) all requirements for the Project have been assigned to the appropriate Separate Contract, (c) the likelihood of jurisdictional disputes has been minimized, and (d) proper coordination has been provided for phased construction.

5. BIDDING PHASE

5.1. The construction manager shall not be a bidder on any individual contract within the project. The construction manager shall develop Bidder's interest in the Project, establish bidding schedules, and issue bid documents to bidders. The construction manager shall assist the design team with the receipt of questions during the bid phase, and with the issuance of Addenda.

5.2. Assist with pre-qualification process for the selection of prime and/or sub-contractors based on the detailed definition of Project scope, budget, schedule, and programming support. Develop a list of pre-qualified prime and sub-contractors, as required.

5.3. Develop bidders' interest in the Project. Coordinate all bid phase activities with District departments. Conduct pre-bid conferences to familiarize bidders with the bidding documents, and any special systems, materials or methods and with Project procedures. Conduct job walks and bidders' conferences, maintain and prepare minutes of job walks or bidder's conferences. Field questions from bidders, referring questions to design professional(s) and District as required. Coordinate with design professional(s) (if applicable) to respond to bidder questions by addenda.

5.4. Prepare public solicitation notices for District approval. Review, coordinate, and estimate cost of bid phase addenda.

5.5. Review bid proposals for responsiveness to bid requirements, evaluate bidder responsibility, and conduct reference checks. Prepare bid analyses and advise the District on compliance of bidders with District requirements and bid requirements. Report and recommend to the District after review and evaluation. Make recommendations to the District for prequalification of bidders and award of contracts or rejection of bids.

5.6. The construction manager shall certify in writing, that the contracts contained from bid documents represent all the prime contracts required to perform the work in the plans and specifications for the total project, and that no additional prime contracts are foreseen to complete the necessary work on the project.

5.7. Conduct post-bid conferences as required. Assist and advise regarding bid protests.

5.8. If appropriate, coordinate contracting with Contractor awarded the contract, including evaluating bonds and insurance, and negotiate final terms of construction contractor's contract(s), if applicable.

5.9. Conduct pre-award conferences with successful bidders.

5.10. Schedule and conduct preconstruction meetings. Maintain, prepare, and distribute minutes.

5.11. Assist with the preparation of agenda items for Board approval. Coordinate submittals required by governing agencies.

6. CONSTRUCTION PHASE

6.1. Administer the construction Contract throughout construction and for one (1) year following the date the prime contractors' Notice of Completion is recorded with the County Recorder.

6.2. Develop detailed construction schedules or review all prime Contractor submitted schedules, as needed. Administer and coordinate the work of prime Contractors on a daily basis. Enforce performance, scheduling, and notice requirements. Review Contractor's schedule submittals and make recommendations to the District.

6.3. Monitor schedule and cost information for prime Contractor. Document the progress and costs of the Project. Report and advise proactively on potential schedule and budget variances and impacts. Recommend potential solutions to schedule and cost problems. Work cooperatively with the District, Architect, and prime Contractor to ensure that Project is delivered on time and within budget. Review construction progress and prepare reports.

6.4. Verify permits, approvals, bonds, insurances, and schedules of values. Coordinate with DSA Project inspector (if applicable), and ensure compliance with all DSA reporting and closeout requirements (if applicable). Submit necessary reports to state and local authorities.

6.5. Monitor the construction Contractors to verify that tools, equipment, and labor are furnished and work performed and completed within the time required or

indicated by the plans and specifications, under the direction and to the satisfaction of the District. The Construction Manager expressly agrees to verify that the specifications are met, observed, performed, and followed in accordance with the professional standards of care for construction management.

6.6. Coordinate work of the construction Contractors and effectively manage the Project to achieve the District's objectives in relation to cost, time and quality.

6.7. Provide continuous on-site construction management personnel, as needed. Conduct construction meetings for the Project to discuss and resolve such matters as progress, quality and scheduling. Said meetings shall be weekly. Prepare and promptly distribute minutes. When required by field or other conditions, construction progress, or the quality of workmanship, conduct special construction meetings; record, prepare, and distribute minutes of these meetings to the District, the affected construction Contractors, and design professional(s) (if applicable).

6.8. Establish and implement team communication procedures.

6.9. Consistent with the Project Construction Schedule issued with the Bidding documents, and utilizing the Contractor's construction schedules provide by the separate Contractors, update the Project Construction Schedule incorporating the activities of Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery of products requiring long lead time procurement. Include the District's occupancy requirements.

6.10. Ensure that construction Contractors provide construction schedules as required by the construction Contracts, including activity sequences and durations, submittal schedule, or procurement schedule for products that require long lead time. The Construction Manager shall review construction Contractors' construction schedules for conformity with the requirements of the construction Contract and conformity with the overall schedule for the Project. Where construction Contractor's construction schedules do not so conform, the Construction Manager will take appropriate measures to secure compliance, subject to District approval.

6.11. Ensure construction Contractor's compliance with the requirements of the respective construction Contract for updating, revising, and other obligations relative to their respective construction schedules.

6.12. Cost Control. Construction Manager shall develop and monitor an effective system of construction cost control for the Project. Construction Manager shall identify variances between actual and budgeted or estimated costs and advise District and design professional(s) whenever a Project cost exceeds budgets or

estimates. Construction Manager shall manage the construction bids and contracts in accordance with the Construction Budget.

6.13. Continually monitor whether construction contract requirements are being fulfilled and recommend courses of action to the District when Contractor fails to fulfill contractual requirements.

6.14. Evaluate and process payment applications and verify progress. Certify and make recommendations to the architect and District for payment.

6.15. Verify that safety programs are developed and submitted by the construction Contractors as required by the Contract. Neither Construction Manager nor District shall be responsible for or have any liability for Contractor's failure to provide, comply with, or enforce said safety programs.

6.16. Implement quality control program, including As-Built Drawings accuracy. Coordinate and evaluate Contractor's recovery schedules.

6.17. Record the progress of the Project by a log.

6.18. Monitor ongoing Project costs to verify that projected costs do not exceed approved budget and provide the District timely notice of any potential increase in costs in excess of approved budgets provided to Construction Manager.

6.19. Negotiate Contractor's proposals and review change orders prepared by design professional(s), with design professional(s)' input as needed, for approval by the District.

6.20. Evaluate and process change order requests. Make recommendations to the District. Determine cost and schedule effects of change orders. Prepare change order reports and maintain a change order log for the Project and implement procedures to expedite processing of change orders.

6.21. Assist the District in coordinating the services of special consultants and testing laboratories on the Project.

6.22. In conjunction with the design professional(s), monitor work of the construction Contractors to determine that the work is being performed in accordance with the requirements of the respective construction documents for the Project, including but not limited to the plans, specifications, addenda, and all other contract documents, as well as all applicable laws, regulations and directives of agencies with jurisdiction over any of the Project. As appropriate, with assistance of design professional(s), make recommendations to the District regarding special inspection or testing of work that is not in accordance with the provisions of the contract documents.

6.23. To guard District against defects in the work of the construction Contractors, the Construction Manager shall implement a quality control program to monitor the quality and workmanship of construction for conformity with:

6.23.1. Accepted industry standards;

6.23.2. Applicable laws, rules, or ordinances; and

6.23.3. The design documents and contract documents.

6.24. Where the work of a construction Contractor does not conform as set forth above, the Construction Manager shall, with the input of design professional(s) (if applicable):

6.24.1. Notify the District of any non-conforming work observed by the Construction Manager;

6.24.2. Reject the non-conforming work; and

6.24.3. Take any and all action(s) necessary to compel the construction Contractor to correct the work.

6.25. Evaluate, track, and maintain logs of requests for information ("RFI") from construction Contractor and responses, shop drawings, samples, and other submittals, based, in part, on information obtained from the design professional(s) (if applicable). Advise District and Program Manager as to status and criticality of RFIs.

6.26. Implement procedures, in collaboration with the District and design professional(s) (if applicable), for expediting the processing and approval of shop drawings, product data, samples, and other submittals for each contract. Receive and transmit all submittals from the construction Contractor to the design professional(s) for review and approval. Maintain submittal and shop drawing logs.

6.27. Record the progress of work at the Project. When present, prepare daily reports for the Project containing a record of weather, construction Contractor(s) present and their number of workers, work accomplished, problems encountered, and other relevant data.

6.28. Prepare and distribute monthly project status reports for the Project including updates on project activities, progress of work, outstanding issues, potential problems, schedule, and status of RFIs, change orders, and submittals.

6.29. Coordinate, assist, and support Architect (if applicable) during construction administration phase as required.

6.30. Construction Manager shall maintain records of principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations as provided by the construction Contractor. At the completion of the Project, deliver all such records to District. Construction Contractor and design professional(s) share responsibility to prepare Record Drawings and As-Built Drawings.

6.31. Coordinate the move into the Project.

6.32. Work with District team to develop lists of incomplete or unsatisfactory work ("punch lists").

6.33. Fully document and prepare deductive change orders for extra services of consultants that are the responsibility of a Contractor or another consultant. Present such a change order for signature by the Contractor or consultant.

6.34. Determine final completion and payment. Determine completion dates, final payments, and release of retention. Coordinate procurement and installation of Furniture, Fixtures, and Equipment ("FF&E").

7. PROJECT COMPLETION

7.1. The Construction Manager shall observe the construction Contractor's check-outs of utilities, operational systems and equipment, and start-up and testing. The Construction Manager shall maintain records of start-up and testing as provided by the construction Contractor and shall ensure the District of compliance with applicable provisions of the Contract, that all work has been performed and accepted, and that all systems are complete and operative. Construction manager shall video record all in-service trainings as required by contract documents and turn over a CD to the District with closeout documents.

7.2. At the punch list phase of the Project or designated portions thereof, the Construction Manager, in consultation with the Architect, shall ensure the preparation of a list of incomplete or unsatisfactory work or work which does not conform to the requirements of the contract documents ("punch list work") and a schedule for the completion of the punch list work. The Construction Manager shall provide this list to the construction Contractor. The Construction Manager shall coordinate construction Contractor's performance and completion of punch list work. The Construction Manager shall review, with the Architect (if applicable) and District, the completed punch list work. The Construction Manager shall ensure, with input of the Architect, that the completed punch list work complies with applicable provisions of the construction Contract.

7.3. The Construction Manager shall determine, with the Architect and District, when the Project or designated portions thereof are complete.

7.4. The Construction Manager shall conduct, with the Architect (if applicable) and District, final inspections of the Project or designated portions thereof. The Construction Manager shall notify the District of final completion.

7.5. The Construction Manager shall consult with the Architect (if applicable) and District and shall determine when the Project and the construction Contractor's work are finally completed. The Construction Manager shall assist with the issuance of a Certificate of Final Completion, and shall provide to the District a written recommendation regarding payment to the Contractor.

7.6. The Construction Manager shall coordinate close-out procedures, including personnel training. Advise District staff on systems operations, training and close-out of Projects.

7.7. The Construction Manager shall coordinate and expedite Contractor close-out requirements, including guarantees/warranties, certificates, keys, manuals, As-Built Drawings, Record Drawings, specifications, daily logs, and verified reports. Ensure that all other project participants submit necessary close-out documentation.

7.8. The Construction Manager shall coordinate operational safety reviews with District post occupancy and manage corrective work as necessary.

7.9. The Construction Manager shall ensure that all building commissioning requirements have been fulfilled in a timely manner through District commissioning agents.

7.10. The Construction Manager shall obtain occupancy permits (where required), coordinate final testing, documentation, and regulatory inspections. Prepare occupancy plan report.

7.11. The Construction Manager shall prepare final accounting reports.

8. FINAL DOCUMENTS

The Construction Manager shall review and monitor all As-Built Drawings, maintenance and operations manuals, and other closeout documents to be sure that all required documents meeting contract requirements are provided, and shall secure and transmit to the District those documents and all required guarantees, keys, manuals, record drawings, and daily logs. The Construction Manager shall also forward all documents and plans to the District upon completion of the project and ensure all such plans and documents are well organized for any appropriate audit or review of the Project.

9. WARRANTY

The Construction Manager shall assist the District as necessary to implement a Warranty Inspection and Warranty Work procedure for the Project that Contractor must follow. The procedure shall include a twelve (12) month call back period and a final warranty inspection eleven (11) months after Project completion to inspect the Project and identify any outstanding warranty work.

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EXHIBIT "B"

CRITERIA AND BILLING FOR EXTRA SERVICES

The following Extra Services to this Agreement shall be performed by Construction Manager if needed and requested by District:

1. Providing services required because of significant documented changes in the Project initiated by the District, including but not limited to size, quality, complexity, or the District's schedule.

2. Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing services required in connection with replacement of such work.

3. Providing services made necessary by the default of Contractor, or by major defects or deficiencies in the work of the Contractor, or by failure of performance of the District's consultants.

4. Seeking variances or changes to agency guidelines on behalf of the District when so directed by the District.

5. Preparing to serve or serving as a witness in connection with any public hearing, dispute resolution proceeding or legal proceeding, other than that necessitated by the negligent acts, errors or omissions of Construction Manager or where the Construction Manager is a party thereto, except for a Contractor's hearing necessitated by a bid protest or by a Contractor's request to substitute a subcontractor, or by handling of any stop payment notices.

6. Performing technical inspection and testing.

7. Providing other services not otherwise included in this Agreement and not customarily furnished in accordance with the generally accepted scope of construction management practice.

The rates identified in the Fee Schedule attached to **Exhibit "D"** include overhead, administrative cost and profit and may be utilized in arriving at the fee for Extra Services or as negotiated by the District. The District reserves the right to either modify the current fee structure in place under this Agreement, adopt a new fee structure based on the additional services, or use the Rates set forth in **Exhibit "D"** for extra services.

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EXHIBIT "C"

SCHEDULE OF WORK

Pre-construction Services - Services will be provided during the design phase as part of this agreement. Services will commence in **April 2022** and end upon the receipt and acceptance of all prime contractor bids for each project listed in the chart below under Construction Services.

Construction Services - The project duration is indicated in the following Schedule:

Group 1

Ford Asphalt Repairs

- Parking Lot North – June 27, 2022 – July 10, 2022
- Parking Lot South – July 11, 2022 – August 14, 2022

Palm Desert Charter Middle School Asphalt Repairs

- Entire Campus - June 4, 2022 – July 31, 2022

Note: No additional compensation will be granted to the construction manager if the construction work goes beyond the construction duration identified in the chart above, with the exception of any District directed and approved changes to the construction duration.

Construction Cost Budget - The construction cost budget for each project is as indicated in the following matrix and consists of the sum of prime bids for each project or the sum of prime bids for any combination or grouping of projects:

2022- 2023 DEFERRED MAINTENANCE PROJECTS

GROUP 1 - PROJECTS	CONSTRUCTION ESTIMATE
FORD ASPHALT REPAIRS	155,000
PALM DESERT CHARTER MIDDLE SCHOOL ASPHALT REPAIRS	155,000
TOTAL GROUP 1	**310,000**

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EXHIBIT "D"

FEE SCHEDULE

Compensation

1. The Construction Manager's fee set forth in this Agreement shall be full compensation for all of Construction Manager's Services incurred in its performance, including, without limitation, all costs for personnel, travel offices, and per diem expenses.

2. The amount of compensation shall be the amount set forth in the Agreement, including all billed expenses. No compensation will be paid or due, without advance written approval of the District.

Method of Payment of Basic Services

1. Construction Manager shall submit monthly invoices on a form and in the format approved by the District.

2. Construction Manager shall submit these invoices in duplicate to the District via the District's authorized representative.

3. Construction Manager shall submit to District on a monthly basis documentation showing proof the payments were made to Construction Manager's Consultants, sub-consultants, and/or subcontractors.

4. The Construction Manager's fee is broken down into the following categories:

Pre-Construction Services	$46,092
Construction Services	$90,766
Corporate Principal *Executive Project Director* *Superintendent*	
Sr. Project Coordinator *Cell Phones* *Internet* *Vehicles* *Other*	
Construction Management Fee	$9,300

The construction manager shall invoice for each of the categories listed above as follows:

A. Pre-construction Services Invoice Procedures

During the pre-construction phase of the project, the construction manager shall submit invoices for work completed as part of **pre-construction services** based on the following:

Pre-construction Pre-Bid and Bidding Services

- Coordination Meetings
- Budget/Estimating/Value Engineering
- Constructability Reviews
- Specification and Scope of Work Development
- Exhibits and Plans for Bidding

Invoices shall be submitted at the end of each month for work completed through the month. Invoice for bidding phase may be submitted once all bids are received for the project and accepted by the District. The invoice amount shall not exceed the proposed staffing plan for preconstruction as follows:

(Groups 1 per District's Schedule)

		PRE CON		CONSTRUCTION + CLOSEOUT			
Position:	**Hourly Rate**	**APR**	**MAY**	**JUNE**	**JULY**	**AUG**	**SEPT**
Executive Project Director:	$180.00	40%	40%	20%	20%	20%	10%
		$11,520	$12,672	$6,336	$6,048	$6,624	$3,168
Project Coordinator:	$125.00	30%	30%	10%	10%	10%	20%
		$6,000	$6,600	$2,200	$2,100	$2,300	$4,400
Superintendent 1:	$150.00	0%	0%	40%	40%	40%	0%
		$0	$0	$9,600	$9,600	$9,600	$0
Superintendent 2:	$150.00	0%	0%	40%	40%	40%	0%
		$0	$0	$9,600	$9,600	$9,600	$0

PRE CON $46,092
CONSTRUCTION $90,766
FEE $9,300

GRAND TOTAL $146,158

B. Construction Phase Invoice Procedures

During the construction phase of the project, the construction manager shall submit monthly invoices for work completed during the **construction phase** as follows:

General Conditions

Construction Phase and Closeout Phase
Payments for construction services shall billed on a monthly basis and not exceed the following proposed staffing plan for the construction phase:

(Groups 1 per District's Schedule)

		PRE CON		CONSTRUCTION + CLOSEOUT			
Position:	**Hourly Rate**	**APR**	**MAY**	**JUNE**	**JULY**	**AUG**	**SEPT**
Executive Project Director:	$180.00	40%	40%	20%	20%	20%	10%
		$11,520	$12,672	$6,336	$6,048	$6,624	$3,168
Project Coordinator:	$125.00	30%	30%	10%	10%	10%	20%
		$6,000	$6,600	$2,200	$2,100	$2,300	$4,400
Superintendent 1:	$150.00	0%	0%	40%	40%	40%	0%
		$0	$0	$9,600	$9,600	$9,600	$0
Superintendent 2:	$150.00	0%	0%	40%	40%	40%	0%
		$0	$0	$9,600	$9,600	$9,600	$0

PRE CON $46,092
CONSTRUCTION $90,766
FEE $9,300
GRAND TOTAL $146,158

Services shall be rendered according to the contract duration stipulated in prime contractors' agreements and the project bid schedule.

C. Construction Management Fee Invoice Procedures

During the construction phase of the project, the construction manager shall submit monthly invoices as for work completed during the **construction phase** as follows:

Construction Management Fee
The fee during the construction phase shall be 98% of the Construction Management Fee.

Payment for the construction management fee shall be derived as an aggregate amount of all prime contracts percentage of construction complete. The percentage complete shall be derived as an aggregate amount of all prime contractors monthly payment applications. Services shall be rendered according to the contract duration stipulated in prime contractors' agreements and the project bid schedule.

Close-out

The remaining 2% of the Construction Management fee shall be invoiced as follows:

Payment for the remaining 2% of the construction management fee shall not be made until all prime contractors closeout and warranty items have been turned over to the District and a notice of completion has been filed for all prime contractors.

Reimbursable Expenses

The construction manager shall be reimbursed for costs associated with the electrical, gas, water, and other similar utility/services, including costs for permits and fees required for said services. Costs for reproductions, including mailing, postage and overnight expenses are included in the pre-construction and construction phase fee. All other reimbursable expenses related to the project shall only be billed upon approval of the District prior to making expenses. All approved reimbursable expenses shall be passed on to the District at direct cost with no mark-up.

Hourly Rates for Extra Services

1. The following rates, which include overhead, administrative cost and profit, shall be utilized in arriving at the fee for Extra Services and shall not be changed for the term of the Agreement. Construction Manager shall bill in quarter-hour increments for all Extra Services.

Job Title	Hourly Rate
Corporate Principal	No Charge
Executive Project Director	$180
Superintendent	$150
Sr. Project Coordinator	$125

2. There shall be no mark up on any approved item of Extra Services performed by sub-consultant(s).

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EXHIBIT E

CRIMINAL BACKGROUND INVESTIGATION/FINGERPRINTING CERTIFICATION

PROJECT/CONTRACT NO.: Construction Management Services Agreement between the Desert Sands Unified School District ("District") and Ledesma & Meyer Construction Company, Inc., ("Construction Manager" or "Bidder") for the 2022-2023 Deferred Maintenance Projects – Group 1 ("Contract" or "Project").

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of the Construction Manager currently under contract with the District; that I am familiar with the facts herein certified; and that I am authorized and qualified to execute this certificate on behalf of Construction Manager.

Construction Manager certifies that it has taken at least one of the following actions with respect to the construction Project that is the subject of the Contract (check all that applies):

_X_ The Construction Manager has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Construction Manager's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Construction Manager's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

_X_ Pursuant to Education Code section 45125.2, Construction Manager has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Construction Manager's employees and District pupils at all times; and/or

_X_ Pursuant to Education Code section 45125.2, Construction Manager certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Construction Manager who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Construction Manager's employees and its subcontractors' employees is

Name: JOSEPH M. LEDESMA

Title: CEO

X The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

Construction Manager's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Construction Manager.

Date: APRIL 7, 2022

Proper Name of Construction Manager: LEDESMA & MEYER CONSTRUCTION CO. INC.

Signature: _____

Print Name: JOSEPH M. LEDESMA

Title: CEO

END OF DOCUMENT