

**AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES
FOR MULTI-PRIME PROJECT
(New Elementary School at McCandless)**

This Construction Management Services Agreement (“Agreement”) is made and entered into this 24th day of August, 2016, by and between the MILPITAS UNIFIED SCHOOL DISTRICT (hereinafter referred to as “District”) and Blach Construction Company (hereinafter referred to as “Construction Manager”) for construction management services relating to the McCandless Elementary School Project (hereinafter referred to as “Project”).

**ARTICLE I
REPRESENTATIONS AND RESPONSIBILITIES**

A. Construction Manager represents that it has the capabilities and skills in project design review and evaluation, cost estimating, bidding management and bid evaluation, construction supervision, claims review and negotiation, project close-out, project scheduling, budget management and cost control, and general management and administration of construction projects. Construction Manager agrees to provide its best skill and judgment in furthering the interests of District in the management of the construction of the Project.

B. Construction Manager agrees to furnish efficient business administration and management services and to perform in a manner consistent with the interests of District. The Construction Manager’s Services for the Project shall be as follows and as enumerated in Article II and Exhibit “A” to this Agreement.

**ARTICLE II
BASIC SERVICES**

A. Basic Services Defined: Construction Manager’s “Basic Services” consist of those services performed by Construction Manager and Construction Manager’s employees and consultants to provide the core functions listed below and more specifically set out within Exhibit “A”. “Core Functions” are contract duties that must be maintained throughout the life of the Project.

1. Observation of Work: Provide ongoing observation of the quality and progress of the work to assist the District and Architect in their efforts to have the work completed in conformance with the Project plans and specifications.

2. Providing General Conditions: Construction Manager will provide general conditions for the project, which shall include, where necessary, project and work supervision, and management only of the following provided by either the District or Contractors: temporary job site toilets, coordination of job safety programs, project fencing and securing the site daily, and project clean up.

3. Schedule and Budget Considerations: Construction Manager will prepare and manage the Project schedule and construction budget (Cost Control Reports) based on parameters provided by the District. The schedule and budget shall be updated and revised by the Construction Manager as the Project progresses and as stated in this Agreement.

4. Coordination and Management Meetings: Provide ongoing senior management involvement in progress meetings.
5. Communication: Construction Manager shall provide overall coordination of the Project and shall be the focal point of all communication to and from construction contractor(s) and shall be copied on all communication between District and design professionals. The Construction Manager may be required to attend District Board meetings (monthly) and/or Bond Oversight Committee meetings (quarterly).
6. Construction Manager Representative: It is of primary importance to the District that it approve the Construction Manager Representative for the Project. The Construction Manager designates Brian Azzopardi and/or Cheryl Butters (if available), as its Construction Manager. The Representative may not be replaced without the consent of the District, and a replacement must be approved by the District, in its sole discretion.
7. Status Reports: Throughout the Progress of the work, the Construction Manager shall provide progress reports to the District, which will include updates on the project expenditures and their impact on the budget, description of work completed and analysis of any construction issues or claims that have arisen.
8. Project Database: Construction Manager will install or maintain (as the case may be appropriate), a Project database that shall include electronic copies of critical project documents, including, but not limited to: (1) Contract documents, (2) Submittals, (3) Change order Requests, (4) Approved Change Orders, (5) Requests for Information (“RFI”); (6) Schedules; (7) Meeting Minutes; and (8) Progress Payment Applications. The system and the data therein shall be the property of the District and will remain with the District upon completion of the Project. Construction Manager will provide such access and training as to allow District employees access to the Project data. Construction Manager shall maintain a Submittal Log, RFI Log, and Change Order Log, which will all be updated no less than once a week. Construction Manager shall update the Project Budget (Cost Control Report) and Schedule no less than once a month.
9. Cost Estimates: Construction Manager will incorporate two cost estimates provided by the architect into the project budget as referenced in Article IIA.3.
10. Nonconforming Work: If the Construction Manager becomes aware of any fault or defect in the Project or nonconformance with the contract documents, the Construction Manager shall give prompt notice thereof to the owner.

ARTICLE III ADDITIONAL SERVICES

The following “Additional Services” shall be performed by the Construction Manager only upon request and authorization in writing from the District and shall be paid for in accordance with Basic Services Hourly Rates as set forth in Exhibit “E”.

- A. Services other than general assistance to the Architect related to investigations, appraisals or evaluations of existing conditions, facilities or equipment.

- B. Consultation on replacement of work damaged by fire or other cause during construction, and furnishing services in conjunction with the replacement of such work.
- C. Services made necessary by the material default of any Trade Contractor.
- D. Preparing to serve, or serving, as an expert witness in connection with any public or other legal proceeding; provided, however, that preparing or serving as a fact witness for the District in any legal proceeding involving the Projects or rendering testimony necessary to secure governmental approvals for the Projects will not constitute an additional service hereunder.
- E. Recruiting or training maintenance personnel beyond the building turnover period.
- F. Inspections of and services related to the Project after the end of the Project Close Out Phase, not included in the scope of this Agreement except that the Construction Manager shall assist the District, as a Basic Service hereunder, with all warranty claims during the warranty period.

ARTICLE IV DISTRICT RESPONSIBILITIES

- A. Project Information: The District shall provide full and complete information regarding the requirements of the Project, which shall set forth the District's objectives, constraints and criteria.
- B. Budget: The District shall provide the budget for the Project.
- C. District's Representative: The District shall designate a representative ("District's Representative") to act on the District's behalf with respect to the Project. The authorized Representative shall render decisions promptly to avoid unreasonable delay in the progress of the Construction Manager's services and shall expeditiously process contractor payment applications and change order documentation and shall make all required payments in a timely manner.
- D. Tests, Inspection and Reports: The District shall furnish tests, inspections and reports as required by law or the Contract and Construction Documents.
- E. Nonconforming Work: If the District observes or otherwise becomes aware of any fault or defect in the Project, or nonconformance with the contract documents, the District shall give prompt notice thereof to the Construction Manager.

ARTICLE V CONSTRUCTION MANAGER'S COMPENSATION

- A. Basic Fee: District agrees to pay the Construction Manager for performance of all Construction Management services contemplated under the terms of the Agreement, a fee to be calculated according to Exhibit "B" to this Agreement.
- B. Compensation for Additional Services: Additional Services are defined and described in Article III, above. Compensation for any Additional Services authorized by the

District during the planned duration of services shall be made in accordance with Basic Services Hourly Rates as set forth in Exhibit “E”.

ARTICLE VI PAYMENT SCHEDULE

A. Monthly Payments: The fee for Basic Services shall be paid in the amounts and intervals as stated in Exhibit “B” hereto.

B. Payment Due Date: All payments called for within Article V, above, shall be made to Construction Manager within thirty (30) days of Construction Manager’s submittal of a properly prepared invoice or Application for Payment.

C. Withholding of Disputed Sum: In the event that District disputes any charge or cost contained within Construction Manager’s invoice or Application for Payment, the amount then due Construction Manager shall be reduced by no more than the sum in dispute and the balance timely paid.

D. Payment Applications: If District reduces any invoice or Application for Payment submitted by Construction Manager, District shall promptly inform Construction Manager, in writing, of the amount and reason for such reduction. District agree to seek, in good faith, a timely and equitable resolution of any disputed amounts.

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

ARTICLE VII PROJECT SCOPE AND SCHEDULE

A. Time Schedule. The services to be provided under this Agreement shall be completed in general accordance with the schedule contained in Exhibit “C”.

B. Project Scope: The scope of work for the Project is set forth in Exhibit “D”.

ARTICLE VIII TERMINATION, ABANDONMENT OR SUSPENSION OF WORK

A. Written Notice: The District may suspend or terminate the Construction Manager’s services under this Agreement following thirty (30) days written notice to the Construction Manager because of the failure of the Construction Manager to satisfactorily perform under this Agreement or if the Construction Manager fails to complete its services or otherwise comply with the terms of this Agreement.

B. 14 Day Notice: District shall also have the right in its absolute discretion to terminate this Agreement in the event the District is not satisfied with the working relationship with Construction Manager and without cause following fourteen (14) days prior written notice from District to Construction Manager.

C. Right of Suspension or Abandonment: The District may suspend or abandon all or any portion of the work on the Project upon written notice to the Construction Manager. Upon notice of suspension or abandonment, Construction Manager shall as soon as practicable discontinue any further action on the Project or portion thereof.

D. No Executory Obligations: If the entire work to be performed on the Project is abandoned, the parties shall each be relieved of the remaining executory obligations of the Agreement, as it relates to the Project, but shall not be relieved of any obligations arising prior to said abandonment.

E. Termination Fee: In the event of termination not the fault of the Construction Manager, including termination for convenience, abandonment or suspension, the Construction Manager shall be compensated for all services performed to the termination date together with all reasonable Termination Expenses. It is agreed that all recoverable termination expenses will be satisfied by the payment of an amount equal to five percent (5%) of the Basic Fee.

F. Termination Fee Offset: In the event of termination due to a breach of this Agreement by Construction Manager, the Termination Fee due Construction Manager upon termination shall be reduced by the amount of damages sustained by District due to such breach.

G. Delivery of Documents: Upon termination, abandonment or suspension, Construction Manager shall deliver to District all documents and matters completed by Construction Manager to which District would have been entitled at the completion of Construction Manager's services.

ARTICLE IX INDEMNIFICATION

A. Duty To Indemnify And Hold Harmless: To the fullest extent permitted by law, and subject to the limitations of Civil Code § 2782, Construction Manager agrees to indemnify, defend and hold District, its board members, employees, and officers harmless from liability arising out of:

1. Any and all claims under Workers' Compensation acts and other employee benefit acts with respect to Construction Manager's employees or Construction Manager's subcontractor's employees arising out of Construction Manager's work under this Agreement;

2. Liability for damages for: (a) death or bodily injury to person; (b) injury to, loss or theft of property; (c) any failure to comply with any provision of law; or (d) any other loss, damage or expense arising under either (a), (b), or (c) above, caused by the Construction Manager or any person, firm or corporation employed by the Construction Manager upon or in connection with the Project, except for liability resulting from the active negligence, or willful misconduct of the District, its board members, officers, employees, agent or independent Construction Managers who are directly employed by the District; and

3. Any loss, injury to or death of persons or damage to property caused by any negligent acts or omissions of the Construction Manager, or any person, firm or corporation employed by the Construction Manager, either directly or by independent contract.

B. Duty To Defend Claims:

1. The Construction Manager, at Construction Manager's own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the District, its board members, officers, or employees, on account of any of the causes identified within Article IX, Section A, Subsections 1, 2, and 3, above, and shall pay or satisfy any judgment that may be rendered against the District, its officers, or employees in any actions, suit of other proceedings as a result thereof.

2. Said indemnity is intended to apply during the period of this Agreement of Construction Manager's performance and shall survive the expiration or termination of this Agreement until such time as action against District on account of any matter covered by such waiver of indemnity is barred by the applicable statute of limitation.

**ARTICLE X
SUCCESSORS AND ASSIGNS**

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

**ARTICLE XI
APPLICABLE LAW**

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

**ARTICLE XII
CONSTRUCTION MANAGER NOT OFFICER OR EMPLOYEE OF DISTRICT**

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

**ARTICLE XIII
INSURANCE**

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

1. Workers' Compensation:

a. State Statutory

b. Applicable Federal Statutory

2. Comprehensive General Liability: (including premise-operations; Independent Contractor Protection; Products and Completed Operations; Broad Form Property Damage):

- a. Bodily Injury (including personal \$1,000,000 each occurrence injury, sickness, disease or death).
- b. Property Damage \$1,000,000 each occurrence, \$1,000,000 aggregate.

3. Contractual Liability:

- a. Bodily Injury \$1,000,000 each occurrence.
- b. Property Damage \$1,000,000 each occurrence, \$1,000,000 aggregate.

4. Personal Injury with Employment: \$1,000,000 Aggregate Exclusion deleted.

5. Comprehensive Automobile Liability: (owned, non-owned, hired)

- a. Bodily Injury \$1,000,000 each person \$1,000,000 each accident.
- b. Property Damage \$1,000,000 each occurrence

6. Professional liability insurance: (i.e. errors and omissions insurance) in an amount of not less than \$1,000,000.00.

B. District As Additional Insured: Each policy of insurance required in Article XIII, Section A, above, shall name the District and its officers, agents, and employees as additional insureds and shall state that, with respect to the operations of the Construction Manager hereunder, such policy is primary and any insurance carried by DISTRICT is excess and non-contributory with such primary insurance. Each policy of insurance required in Article XIII, Section A, above, shall state that not less than thirty (30) days written notice shall be given to the District prior to cancellation and shall waive all rights of subrogation. Construction Manager shall notify the District in the event of material change in, or failure to renew, each policy. Prior to commencing Work, the Construction Manager shall deliver to the District certificates of insurance as evidence of compliance with the requirements herein.

C. Insurance Provided By District:

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

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

**ARTICLE XIV
ENTIRE AGREEMENT**

A. Integration Clause: This Agreement and the attached Exhibits represent the entire Agreement and understanding of the parties concerning the subject matter hereof. This Agreement replaces and supersedes prior negotiations or Agreements between the parties concerning the subject matter hereof.

B. Modifications to Agreement: This Agreement may be amended or modified only by a written instrument duly executed by the parties.

**ARTICLE XV
OWNERSHIP OF DOCUMENTS**

Pursuant to Education Code Section 17316 all plans, specifications and estimates prepared pursuant thereto shall be and remain the property of the District.

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

CONSTRUCTION MANAGER:

DISTRICT:

Blach Construction Company

Milpitas Unified School District

By: _____
Anthony P. Mirenda
Project Executive

By: _____
Cheryl Jordan
Interim Superintendent

Date: _____

Date: _____

EXHIBIT “A”

CONSTRUCTION MANAGER'S SERVICES

To Be Provided Under

CONSTRUCTION MANAGEMENT AGREEMENT

Between

MILPITAS UNIFIED SCHOOL DISTRICT

And

BLACH CONSTRUCTION COMPANY

For the New Elementary School at McCandless

Dated: August 24, 2016

The Construction Manager shall provide all of the services set forth herein relating to the Project. The entire scope of the services in this Exhibit “A” and the scope of services set forth in the Construction Manager’s Agreement shall be described as the “Construction Manager’s Services”.

A. Basic Services: Construction Manager will provide the following services as “Basic Services” pursuant to this Agreement:

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

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

3. Constructability and Coordination Review: Construction Manager shall consult with the District and Architect regarding the Construction Documents and make recommendations whenever design details adversely affect constructability, cost or schedule. Construction Manager will review the required contract document submissions and provide written comments on the coordination of the various disciplines, including civil, structural, architectural, mechanical, electrical, plumbing and landscape. Construction Manager shall also provide a detailed cost estimate based on the Architect’s progress documents at each required document submittal. The document submittals are: 100% Schematic Design; 100% Design

Documents; 90% Construction Documents; and 100% Construction Documents. Construction Manager shall provide its written comments and estimates within one (1) week of each document submittal.

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

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

6. Front End Documents: Construction Manager shall assist the District in preparing Bidding Instructions, Bid Forms, Division 1 General Conditions, and Supplementary Conditions for the Project.

B. Schematic Design Phase

1. Identifying Existing Conditions: Assist the design team in identifying existing conditions, including field verification of existing conditions.

2. Design Progress Meetings: Construction Manager shall attend all schematic design phase progress meetings with Architect and Owner, providing input as needed.

3. Prepare Construction Cost Estimate:

a. Upon submission of the Schematic Drawings to the Construction Manager, the Construction Manager will prepare a Construction Cost Estimate, which the Construction Manager shall review and revise as necessary at each subsequent formal submittal of documents: 100% Design Documents; 90% Construction Documents; and 100% Construction Documents. Architect shall review Construction Manager's Estimate and provide input as necessary to confirm appropriateness and completeness of the Estimate. Where Construction Manager's estimates indicate that projected costs may be at variance with the District's budgetary goals, Construction Manager will present such issues to the District and Architect in writing, along with any readily apparent alternatives which may be identified. Construction Manager will assist the District and Architect in identifying and implementing additional potential cost adjustment measures which might be employed in order to reach budgetary goals.

4. Schematic Design Submittal: Review schematic site and building plans, preliminary sections and elevations, preliminary interior elevations of key spaces, room data sheets and finish schedules, and preliminary descriptions of engineering systems, major materials and equipment for coordination and constructability. Provide written design review comments.

C. Design Development Phase

1. Design Progress Meetings: Construction Manager shall attend all design phase progress meetings with Architect and Owner, providing input as needed.
2. Coordinate Specialty Consultants: Construction Manager will assist District in retaining and will oversee and coordinate any specialty consultants needed for the Project.
3. Product Procurement: Construction Manager will evaluate and advise the District regarding need for procurement of long lead time items.
4. Alternative Design: If requested, the Construction Manager will develop design and bid alternates.
5. Materials and Construction Systems: Construction Manager will review and provide input to the Architect regarding selection of materials and construction systems.
6. Design Development Submittal: Construction Manager shall review and provide comments on the Site Plan, typical construction details, equipment layouts, specifications, and other documents included in the submittal.

D. Construction Document Phase

1. Design Progress Meetings: Construction Manager shall attend all construction document phase progress meetings with Architect and Owner, providing input as needed.
2. Construction Documents Submittal:
 - a. Construction Manager will review and provide written comments on each construction document submittal for coordination and constructability and compliance with District defined Project scope.
 - b. Upon 90% completion of the construction documents, the Construction Manager shall conduct a constructability review. The review shall include the coordination of drawings and Building Code compliance, to the best of the Construction Manager's knowledge. The Construction Manager will also determine whether the drawings contain sufficient detail to provide specific and practical guidance to subcontractors in the field, in such areas as proper building element integration to prevent water intrusion.
3. Construction Schedule: Construction Manager shall prepare a Project Construction Schedule providing for the components of the Work, including phasing of construction, start and complete dates and sequencing relationships between the separate bid package work, move-out and move-in of District furnishings and equipment, times of commencement and completion required of each Contractor, and the occupancy requirements of the District. Construction Manager shall provide the Project construction schedule for each set of bidding documents.
4. Construction Contracts: Construction Manager shall be responsible for the separation of the Architect approved plans and specifications into separate, complete

contracts for the specified categories of work. Construction Manager shall assist the District in the preparation of construction contracts, general conditions and bidding forms. The contracts shall include any provisions reflecting the Assignment of Responsibility, noted in Section 5., below.

5. Assignment of Responsibility. The Construction Manager shall provide recommendations and information to the District regarding the assignment of responsibilities for safety precautions and programs; temporary Project facilities; and equipment, materials and services for common use of contractors. The Construction Manager shall verify that these requirements and assignment of all appropriate and necessary responsibilities and elements of the work are included in the appropriate prime contract.

6. Building Permits: Construction Manager shall assist the District in obtaining California Department of Education (“CDE”) and Department of State Architect (“DSA”) approvals, Health Department and/or local Fire Marshal permits and special permits for permanent improvements, except for permits required to be obtained directly by the various subcontractors. Construction Manager shall verify that the District has paid applicable fees and assessments. Construction Manager shall assist the District and Architect in connection with the District’s responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

7. Development of Procedures: Construction Manager shall develop and implement procedures for the review and processing of applications by Contractors for progress and final payments.

8. Preparing for Bids: The Construction Manager shall endeavor to prepare the bid packages and any related long lead time equipment requirements as early as practicable so that the schedule may be kept. These duties include:

- a. Prepare bid packages
- b. Confirm bid period duration and opening date
- c. Assist District in preparation of Board agenda item authorizing issuance of Project for bids
- d. Develop bid advertising language for the District
- e. Assist District in initiating purchase process for long lead time items for District-furnished items, if applicable
- f. Assist the District in procuring modular systems for the Project.

E. Bidding Phase

1. Bidding Procedures. The Construction Manager shall assist the District in the preparation of Board Agenda items authorizing issuance of bids for the Project. The Construction Manager shall develop and expedite bidding procedures for bid document issuance, bid tracking and receipt of proposals with regard to each of the Contracts. The Construction Manager shall also take the necessary procedures to administer any

prequalification of potential contractors as directed by the District and ensure that all Contracts are competitively bid in compliance with all applicable law.

2. Bid Advertisements: The Construction Manager shall coordinate the preparation and placement of the notices and advertisements to solicit bids for each of the contracts as required by law, and in cooperation with the District.

3. Public Relations Activities. The Construction Manager shall assist the District in all public relations including, but not limited to, preparation of Project information and attending internal and public meetings as required, including site meetings.

4. Pre-Qualification Process: Construction Manager will assist the District and Architect in Contractor prequalification (if required by District). Construction Manager will prepare Bidder Prequalification Procedures, including procedures to prequalify major subcontractor trades if requested by District.

5. Bidder Interest and Relations: Construction Manager shall develop bidders' interest in the Project and establish bidding procedures and schedules.

6. Modification of Trade Contract: In the event the bids exceed the Project budget and the District authorizes rebidding all or portions of the Project, the Construction Manager shall cooperate in revising the scope and quality of work for each applicable trade contract, as required to reduce the construction costs for the Project.

7. Bid and Award of Contract: Construction Manager, with the assistance of the Architect, shall issue bidding documents to bidders and conduct prebid conferences with prospective bidders. Construction Manager shall coordinate the delivery of Bid Documents to the bidders. Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda, prepare cost estimates for any addenda, and communicate the effect on the Project budget to the District. Construction Manager shall assist the District with the bid opening, evaluation of the bids for completeness, full responsiveness and price, including alternate prices and unit prices. Construction Manager shall prepare bid analyses and make recommendations to the District for the District's award of Contracts or rejection of bids.

8. Proof of Insurance and Bonds: Construction Manager shall review and confirm license standing of each contractor selected for the Project. The Construction Manager shall receive and review Endorsements of Insurance, Performance and Payment Bonds, and forward them to the District, with a copy to the Architect prior to commencement of any such work by such contractor.

9. Notice of Award to DIR: Construction Manager shall submit all information to DIR necessary to comply with Labor Code section 1773.3, including the submission of a PWC-100 for each covered contractor.

F. Construction Phase

1. Construction Procedures: Construction Manager will meet with the Architect and the District in a pre-construction meeting to determine and agree upon the implementation of procedures for requests for information, submittals, shop drawings, substitution requests, product samples, change order requests, payment requests and other

procedures and review logs, files, and other necessary documentation in order to provide an orderly and effective system for such administration.

2. Duty of Coordination: The Construction Manager shall actively coordinate the work between the prime contractors, in accordance with the Project Schedule. The prime contractors will be responsible for their own means and methods. The Construction Manager shall maintain communication with the District throughout the Construction Phase and shall be responsible for coordinating the site construction services provisions (general conditions items) including supervision and administration of the Project, conducting construction progress meetings, providing progress reports, processing contractors requests for information (“RFIs”) and submittals, reviewing and recommending with the Architect the approval or disapproval of change orders and payments to the contractors, and maintaining record keeping to assist the District in negotiations, mediation or arbitration of claims or disputes.

3. Procedures for Construction Quality Control: Prior to the commencement of construction, the Construction Manager, Architect and Inspector of Record (“IOR”) shall meet and establish procedures and practices for quality control and which shall include the following steps:

- a. Periodic meetings with subcontractors to assist them in understanding drawing details and appropriate construction methods;
- b. Increased observation of a construction activity at is commencement to help ensure that the work is being performed properly;
- c. If requested by the District, ensure that the IOR role in observation goes beyond life safety, structural and ADA and encompasses all areas of construction observation. The Construction Manager will recommend adjustments to the IOR’s contract to effectuate this expanded role.

4. Project Management Team: Construction Manager shall provide and maintain a project management team on the Project site.

5. Construction Observation. Construction Manager will, using experienced personnel, observe the progress of the work. Construction Manager shall issue deficiency notices with copies to the District and Architect when it observes work installed by the Contractor which does not appear to be in conformity with Contract Documents, and, after concurrence by the Architect, shall make recommendations to the District for measures to enforce compliance with the requirements of the Contract Documents.

6. Testing Coordination: Construction Manager will coordinate with the District’s certified inspector all testing required by the Architect or other third parties. All inspection reports will be provided to Construction Manager on a regular basis. Construction Manager will review reports and notify the District and Architect of any concerns.

7. Pre-Construction Conferences: Upon award of contracts, Construction Manager will conduct, in conjunction with the District and the Architect, a Preconstruction Conference for the benefit of the successful Contractors and will serve to orient the Contractors, subcontractors, and IOR to the various reporting procedures and site rules prior to the commencement of actual construction.

8. Job Site Meetings: Construction Manager will conduct weekly jobsite progress meetings with the Contractors, Architect, and District's representative and keep meeting minutes. Construction Manager shall distribute meeting minutes to all regular attendees within three (3) days of the meeting.

9. Labor Compliance Program: Construction Manager shall cooperate and coordinate with the person responsible for operation of the District's Labor Compliance Program, if applicable.

10. Stormwater Management Program: Construction Manager shall ensure that all Project contractors, subcontractors, and Construction Manager sub-consultants comply with the District-approved stormwater management program that is applicable to the Project.

11. Schedule

a. Recovery Schedule: If requested by the District, Construction Manager will assist the Contractor(s) in preparing a Recovery Schedule. This Recovery Schedule will reflect the corrective action and extraordinary efforts to be undertaken by the Contractor(s) to recapture lost time. This Recovery Schedule will be distributed to Construction Manager, District, Architect, IOR and other appropriate parties by the Contractor(s).

b. Construction Progress Review: Construction Manager will review the progress of construction with the Contractor(s) weekly, observe work in place and that materials are properly stored, and evaluate the percentage complete of each construction activity against the Contractor's Construction Schedule. Construction Manager will continuously monitor whether the construction contract requirements are being fulfilled and will recommend courses of action to the District when the Contractor(s) fails to fulfill contractual requirements. The Construction Manager shall record the progress of the Project in a daily log.

c. Schedule Updates: Utilizing the Construction Schedules provided by the Contractor with each payment application, Construction Manager shall update the Project Schedule on a monthly basis. Where applicable, the Project Schedule shall include the District's occupancy requirements, showing portions of the Project having occupancy priority. Construction Manager shall advise the District in writing regarding any scheduling issues. The Construction Manager will prepare "Look Ahead" schedules for contractors, showing project activities for the subsequent two weeks.

12. Requests for Information: Assist the Architect in the resolution of RFIs, including:

a. Throughout the Construction Phase, Construction Manager will review communications related to Contractor's Requests for Information and shall seek resolution from the appropriate party, providing for timely forwarding of such information to the Contractor.

b. Construction Manager shall transmit to the Architect requests for interpretations of the meaning and intent of the Drawings and Specifications, and assist in the resolution of questions that may arise.

13. Change Order Requests: Review and recommend, in conjunction with the Architect, any necessary or desirable changes to any contract documents and submit same to the District:

a. Evaluate Proposal Cost: Construction Manager will, in a timely manner, evaluate Contractor's proposal costs and will make a formal recommendation to the District regarding acceptance of the proposals for Change Orders.

b. Change Order Reports: Construction Manager will prepare, maintain and distribute a Change Order Log, on a weekly basis, throughout the Construction Phase. This Log will provide information pertaining to proposed and executed change orders, what is needed to resolve each change order and their effect upon the contract price as of the date of the report, and responsibility for any needed information.

c. Change Order Negotiations: Construction Manager shall review requests for changes, assist in negotiating Contractor proposals for changes in cost and/or time, submit recommendations to the Architect and District and, if they are accepted, review Change Orders and Construction Change Directives prepared by the Architect which incorporate the Architect's modifications to the Documents.

d. Claims: Construction Manager shall assist the Architect in the review and evaluation of Claims.

14. Maintain Project Documents: Maintain a copy set of contract drawings, specifications, addenda, contracts, change orders, shop drawings/submittals, RFIs and responses, correspondence, and other records, as required.

15. Contract Administration. The Construction Manager, in cooperation with the Architect, shall administer the construction Contracts as set forth herein and as provided in the General Conditions of the Contacts for construction. The Construction Manager shall coordinate the preparation of construction staging areas on-site for the Project and shall coordinate the preparation of the site for construction, including, but not limited to, coordinating fencing, barricades or other items reasonably necessary for efficient construction. The Construction Manager shall also coordinate the mobilization of all contractors and shall coordinate construction sequencing.

16. Submittal Procedures. The Construction Manager shall establish and implement procedures and coordinate for Architect's review submittals, requests for information, change orders, payment requests, material delivery dates and other procedures; and maintain logs, files and other necessary documentation. Construction Manager shall assist the District with monitoring the certified payroll for the Project. The Construction Manager shall coordinate the dissemination of any information regarding submittals and consult with the Architect and the District if any Contractor requests interpretations of the meaning and intent of the Contract Documents, and assist in the resolution of questions which may arise.

17. Coordination of Technical Inspection and Testing. The Construction Manager shall coordinate with the District's certified inspector all testing required by the Architect or other third parties. If requested, the Construction Manager shall assist the District in selecting any special consultants or testing laboratories. All inspection reports shall be provided to the Construction Manager on a regular basis.

18. Non-Conforming Work. The Construction Manager shall, in conjunction with the District's inspector, review contractor's recommendations for corrective action on observed non-conforming work. The Construction Manager shall make recommendations to the District, the Architect and District's inspector in instances where the Construction Manager observes work that, in its opinion, is defective or not in conformance with the contract documents. The Construction Manager shall assist the District's inspector in observing the Contractor's work to verify that all authorized changes are properly incorporated in the Project. The Construction Manager shall report to the District regarding the status of such activity and provide a written record of the same.

19. Exercise of Contract Prerogatives. The Construction Manager shall advise the District and make recommendations to the District for exercising the District's Contract prerogatives, such as giving the Contractor notice to accelerate the progress when the schedule goals are in jeopardy due to Contractor failings, withholding payment for cause and other prerogatives when required in an effort to achieve Contract compliance.

20. Project Cost Control Report. The Construction Manager shall revise and refine the Project Cost Control Report, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. The Construction Manager shall provide regular updates of the Cost Control Report, showing actual costs for activities in progress and estimates for uncompleted tasks. Construction Manager shall manage and update weekly the Project Budget/Cost Control Report, indicating all approved and potential Change Orders. The Construction Manager shall identify variances between actual and budgeted or estimated costs and advise the District and the Architect whenever the Project's costs appear to be exceeding budgets or estimates.

21. Maintain On-Site Records. In addition to those documents specified in Article II.8. of the Agreement, the Construction Manager shall develop and implement a comprehensive document management program. The Construction Manager shall maintain at the Project site, on a current basis: a record copy of all Contracts, drawings, specifications, addenda, change orders and other modifications, in good order and marked to record all changes made during construction; shop drawings; product data; samples; submittals; purchases; materials; equipment; applicable handbooks; Titles 21 and 24 of the California Code of Regulations; the California Uniform Building Code; maintenance and operating manuals and instructions; other related documents and revisions which arise out of the Contracts. The Construction Manager shall maintain records in duplicate, of principal survey and Project layout lines, grading elevations for the bottom of footings, and key site elevations certified by a qualified surveyor or professional engineer, if necessary. The Construction Manager shall make all records available to the District. At the completion of the Project, the Construction Manager shall deliver all such records to the District.

22. Schedule of Values and Processing of Payments. The Construction Manager shall review and approve each Contractor's schedule of values for each of the activities included in that Contractor's schedule of events. The Construction Manager shall develop and maintain a master schedule of values. The Construction Manager shall develop and implement procedures for the review and processing of applications by Contractors for progress and final payments. Construction Manager shall assist the District with monitoring the certified payroll for the Project. As part of the evaluation of progress payments, the Construction Manager shall review all "as-built" documents and ensure that the Contractor's "as-built" documents are updated and current. The Construction Manager shall review with the

Architect and make recommendations to the District pertaining to payments to the Contractors. The Construction Manager shall ensure that the Verified Reports required by Title 24 of the California Code of Regulations be completed quarterly by the contractors for the Project.

23. Project Status Reports. The Construction Manager shall prepare and distribute monthly a Project Status Report. Construction Manager shall prepare and distribute a monthly Project status report including an update of Project activities, progress of work, outstanding issues, potential problems, schedule, and status of RFIs, submittals, and change orders. Each Project status report shall also include a current Cost Control Report and Project Schedule. The Cost Control Report shall include the impact of all proposed and executed change orders and indicate expenditures to date.

24. Equipment Instruction Manuals, Warranties and Releases. The Construction Manager shall obtain all written material such as operations and maintenance manuals, warranties, affidavits, releases, bonds, waivers and guarantees for all equipment installed in the Project. All such materials, including equipment instruction material, keys and documents shall be reviewed and delivered to appropriate District personnel.

G. Project Close-Out And Post-Construction Duties

1. Punchlist: When the construction Manager considers a trade contractor's work or a designated portion thereof complete, the Construction Manager shall notify the Architect who shall review the work in place and prepare a list of incomplete or unsatisfactory items ("Punchlist") and a schedule for their completion. The Construction Manager shall assist the Architect in conducting inspections.

2. Punchlist Report: In the event that there are Punchlist items remaining on the list ninety (90) days after substantial completion of the Project, Construction Manager will identify those items in a Punchlist Report and shall provide an estimate for cost of completion of those items.

3. Notice of Completion: The Construction Manager shall assist the Architect in conducting final inspections and reviewing Punchlist items. Construction Manager shall evaluate the completion of the Work of the Contractor and make recommendations to the Architect as to when District may file a Notice of Completion.

4. As-Built Drawings: Construction Manager will coordinate and expedite activities in connection with the Contractors' obligation to provide "as-built" documents.

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

6. Testing: With the Architect and the District's maintenance personnel, the Construction Manager shall coordinate and observe the Contractor's final testing and start-up of utilities, operational systems and equipment.

7. Warranties: Construction Manager shall secure and transmit to the Architect warranties and similar submittals required by the Contract Documents for delivery to the District and deliver all keys, manuals, record drawings and maintenance stocks to the

District. Construction Manager shall develop a warranty inspection and warranty work procedure that all Contractor(s) are to follow.

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

EXHIBIT “B”

PROJECT CONSTRUCTION COST BUDGET & FEE CALCULATION

The current Construction Cost Budget and Fee Calculation, is set forth below. If the bid cost exceeds the Construction Cost, any additional amounts due to the Construction Manager for completed design phase services will then be billable and payable to the Construction Manager, in accordance with Article VI of this Agreement. If the bid cost is less than the Construction Cost, the design fees previously billed and paid will not be recalculated downward. The Fee will be adjusted a final time at the time of Project Completion, to include change orders.

CONSTRUCTION MANAGER: BLACH CONSTRUCTION

PROJECT: NEW ELEMENTARY SCHOOL AT MCCANDLESS

CONSTRUCTION COST: \$12,000,000

(Cummulative calculation)

FEE CALCULATION	% Const Cost	CM Fee
First \$500,000	8.00%	\$40,000
Next \$500,000	7.50%	\$37,500
Next \$1,000,000	7.00%	\$70,000
Next \$4,000,000	6.00%	\$240,000
Next \$4,000,000	5.00%	\$200,000
Over \$10,000,000	4.00%	\$80,000
TOTAL CM PROJECT MANAGEMENT FEE:		\$667,500
GENERAL CONDITIONS		
(For multiple prime projects)	% Const Cost	CM Fee
\$1 - \$200,000	15.00%	
\$200,000 - \$500,000	10.00%	
\$500,000 - \$1,000,000	8.00%	
\$1,000,000 - \$2,000,000	6.50%	
\$2,000,000 - \$5,000,000	5.50%	
\$5,000,000 - \$50,000,000	5.00%	\$600,000
\$50,000,000 - \$100,000,000	4.00%	
TOTAL CM GENERAL CONDITIONS FEE:		\$600,000
Additional Costs (See Below)		\$161,500
TOTAL FEE		\$1,429,000

PAYMENT SCHEDULE	CM %	CM FEE	GC %	GC FEE	TOTAL FEE
DESIGN					
100% Schematic Submittal	2.50%	\$16,688			\$16,688
Bidding Modular Complete	5.00%	\$33,375			\$33,375
100% DD Submittal	7.50%	\$50,063			\$50,063
90% CD Submittal	20.00%	\$133,500			\$133,500
100% CD Submittal	2.50%	\$16,688			\$16,688
DSA Approval/Submittal OPSC	2.50%	\$16,688			\$16,688
CONSTRUCTION					
Bidding Complete	10.00%	\$66,750	12.00%	\$72,000	\$138,750
Construction 25% Complete	10.00%	\$66,750	20.00%	\$120,000	\$186,750
Construction 50% Complete	10.00%	\$66,750	20.00%	\$120,000	\$186,750
Construction 75% Complete	12.50%	\$83,438	20.00%	\$120,000	\$203,438
Construction 100% Complete	12.50%	\$83,438	20.00%	\$120,000	\$203,438
Submittal of Final Records	5.00%	\$33,375	8.00%	\$48,000	\$81,375
TOTALS:		\$667,500		\$600,000	\$1,267,500

Additional Costs

(to be billed on a prorata basis during construction period):

\$161,500

1. Coordinate with the City of Milpitas for the construction of Joint Use facilities: basketball court and field.

2. Construct a new traffic intersection on McCandless Drive.

3. Coordinate the importation and testing of fill material (dirt) to raise the land by approximately 3 ft above the identified floodplain areas

GRAND TOTAL \$1,429,000

EXHIBIT “C”

PROJECT SCHEDULE NEW ELEMENTARY SCHOOL AT MCCANDLESS

Following are Schedule Milestone Dates:

Building Schematic Design Submittal :	2 months duration
Bidding Modular Buildings:	2 months duration
Design Development Site:	2 months duration
Construction Documents Submittal :	2 months duration
DSA Approval / Bid Documents :	2 months duration
Site Work Bidding Period:	2 months duration
Construction:	Approximately 15 months

This schedule assumes continual progress on development of documents, with District and Construction Manager review of comments and architect’s estimates provided one week from submittal dates. Seven work days will be allowed for preparation of the 90% CD Estimate.

EXHIBIT “D”

PROJECT SCOPE

NEW ELEMENTARY SCHOOL AT MCCANDLESS

General

New (250) Student Elementary School

Sitework

New School Grounds

Related required utilities; electric, gas, water, sewer, storm, fire

Fire access requirements

Covered outdoor lunch area

School sign, flagpole and marquee

Fencing and gates

Administration Two Story

New administrative offices

Community Center

Learning Communities (8)

Assembly Space and Support spaces

Food Service Kiosk

Food Service Kiosk

EXHIBIT "E"

IDENTIFICATION OF PERSONNEL AND BASIC SERVICES HOURLY RATES

Classification	ST	OT	DT
Estimating & Preconstruction			
Director of Preconstruction Services	\$ 195.00		
Director of MEP Services	\$ 155.00		
Sr. Estimator	\$ 145.00		
Estimator	\$ 125.00		
MEP Engineer	\$ 110.00		
Estimating Assistant	\$ 65.00		
Director of Virtual Design & Constr.	\$ 150.00		
Sr. Modeling Engineer	\$ 125.00		
Constructability Manager	\$ 145.00		
Project Management Services			
Project Executive	\$ 205.00		
Sr. Project Manager	\$ 150.00		
Project Manager	\$ 135.00		
Sr. Project Engineer	\$ 115.00		
Project Engineer	\$ 100.00		
Project Coordinator	\$ 75.00		
Field Operations			
General Superintendent	\$ 205.00		
Director of Health and Safety	\$ 165.00		
Sr. Project Superintendent	\$ 145.00	\$ 189.00	\$ 232.00
Project Superintendent	\$ 130.00	\$ 169.00	\$ 208.00
Asst. Project Superintendent	\$ 115.00	\$ 150.00	\$ 184.00
Foreman	\$ 105.00	\$ 137.00	\$ 168.00
Journeyman Carpenter	\$ 95.00	\$ 124.00	\$ 152.00
Laborer	\$ 75.00	\$ 98.00	\$ 120.00
Safety Engineer	\$ 85.00		
Field Engineer	110.00	143.00	176.00
Bay Area Office			Monterrey Bay Office
2244 Blach Place, Suite 100			40 Ragsdale Ave., # 140
San Jose, CA 95131			Monterrey, CA 93940
408.244.7100 phone			831.372.8100 phone
408.244.2220 fax			931.372.8010 fax
Rates effective as July 1, 2016			