

I. CONSTRUCTION MANAGEMENT SERVICES AGREEMENT

This Construction Management Services Agreement ("Agreement") is entered into this 10th day of January 2017, by and between SANTA BARBARA UNIFIED SCHOOL DISTRICT ("District") and LUNDGREN MANAGEMENT CORPORATION ("CM"). The District and the CM are collectively referred to in this Agreement as "the Parties." This Agreement is entered into with reference to the following recitals, all of which are incorporated herein by this reference.

II. RECITALS

WHEREAS, the District has retained Kruger Bensen Ziemer Architects Inc. (hereinafter "the Architect") to provide and perform certain services in connection with design, bidding and construction of a work of improvement situated on the District's Santa Barbara High School Campus and commonly referred to as the Peabody Grandstand Replacement and Stadium Renovation project ("the Project").

WHEREAS, as of the date of this Agreement, the Architect has completed the Design Documents for the Project.

WHEREAS, the Division of State Architect ("DSA") has approved the Design Documents.

WHEREAS, the District intends to proceed with construction of the Project using the CM-Multi Prime project delivery method.

WHEREAS, the CM represents that it is a professional construction manager, duly qualified and capable of providing the Basic Services described herein in accordance with the terms hereof.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is acknowledged by the Parties, the Parties agree as follows:

III. AGREEMENT

ARTICLE 1: DEFINITIONS

1.1 Definitions.

1.1.1 Architect. The Architect is Kruger Bensen Ziemer Architects Inc. References to the Architect include Kruger Bensen Ziemer Architects Inc. and its consultants retained to prepare or provide any portion of the Design Documents.

1.1.2 Basic Services. The services provided by CM set forth in **Exhibit "A" – Scope of Work** to this Agreement.

1.1.3 Construction Documents. The documents issued by or on behalf of the District under one or more Contracts for construction of the Project. Construction Documents include all modifications issued by or on behalf of the District. Unless otherwise expressly stated, references to the Construction Documents are references to all of the Construction Documents issued for all of the Contracts awarded for Project construction.

1.1.4 Construction Costs. The costs of labor, materials, equipment (inclusive of a Contractor's overhead and profit) necessary to complete construction of the Project.

- 1.1.5 Construction Schedule. A Construction Schedule is the written or graphic description of the scheduling, sequencing and interrelationships of activities necessary to complete the Contract. Construction Schedules are prepared by the CM and the Contractor for review by the CM and acceptance by the District and for incorporation into the Project Schedule by the CM.
- 1.1.6 Contract. A Contract for Construction awarded by the District to a Contractor for the construction of the Project or a portion thereof. The term "Contract" includes Contracts between the District and Trade Contractors.
- 1.1.7 Contractor. A Contractor to the District under a Contract awarded by the District for construction of the Project or a portion thereof. The term "Contractor" includes Trade Contractors.
- 1.1.8 Design Documents. The drawings, specifications, calculations and other work product prepared by or on behalf of the Architect for the Project. Design Documents include, but are not limited to, surveys, soils reports and other documents prepared for the Project by a licensed architect or registered engineer, whether under contract to the Architect or District.
- 1.1.9 District Representative. An individual designated by the District to act on its behalf with respect to the Project and who shall be authorized to render decisions on behalf of the District, as applicable, and to carry out the responsibilities of the District under this Agreement.
- 1.1.10 Final Completion. Final Completion is when all of the work of a Contract has been completed and installed (including items noted for correction, repair or modification upon Substantial Completion) and the Contractor has completed all other obligations to be performed on its part under the Contract.
- 1.1.11 Indemnified Parties. "Indemnified Parties" means the District, its Board of Education, and its officers, agents and employees.
- 1.1.12 Laws. References to "the Laws" in this Agreement shall be deemed references to all applicable laws, ordinances, codes, rules, regulations, judicial decisions or administrative decisions applicable to this Agreement, the services hereunder and/or the Project.
- 1.1.13 Project Budget. The Project Budget is the total costs allocated by the District for bidding and construction of the Project, exclusive of fees and costs of the Architect, CM and other consultants of the District, Site acquisition costs and the costs of furniture, furnishing and/or equipment for the Project which are not included in the scope of the Contract. The Project Budget established by the District may be modified by the District from time-to-time.
- 1.1.14 Project Schedule. The Project Schedule is a written or graphic description prepared by the CM showing the various activities necessary to complete Project construction, and the sequencing of such activities. The Project Schedule shall incorporate Contractors' Construction Schedules.
- 1.1.15 Site. The physical area for construction and activities relating to construction of the Project.

1.1.16 Submittals. Shop drawings, product data or samples prepared or provided by a Contractor or a Subcontractor to a Contractor or suppliers illustrating some portion of the work of the Project.

1.1.17 Substantial Completion. Substantial Completion is when the work of a Contract has been completed and installed and the work can be used or occupied for its intended purposes, subject only to minor corrections, repairs or modifications.

ARTICLE 2: BASIC SERVICES

- 2.1 General; Phases of Services. The CM shall provide and perform the Basic Services described **Exhibit "A" – Scope of Work** to this Agreement. The Basic Services shall be performed and completed in a series of sequential phases generally described as: Pre-Construction, Bidding, Construction and Post-Construction. The scope of the CM's obligations during each phase of the Basic Services shall be as set forth in Exhibit A. CM represents and warrants that it has all licenses, permits, qualifications and approvals of whatever nature legally required to practice its profession and perform the services required hereunder. CM shall keep all such licenses and approvals in effect during the term of this Agreement.
- 2.2 Procurement and Coordination of General Condition Items: The CM shall be responsible for identifying and coordinating items which are necessary for the general construction of the Project under a CM Multi-Prime procurement, but not otherwise included in the Contract such as: equipment rentals (generators, fork lifts, etc.); chain link site fencing and gates; temporary toilets and hand wash stations and servicing; temporary trash disposal at site; material storage containers; temporary site water (by water truck); equipment rental; and signage. Where practical, all general condition items shall be procured by CM as a Reimbursable Expense. The District shall reimburse the CM for general condition items at actual cost, without mark-up or multiple. CM shall assist the District in procuring items that are directly billed to the District. All general condition items shall be approved by the District in writing prior to procurement.
- 2.3 Relationship of CM to Other Project Participants. The CM acknowledges that the District has entered into, or will enter into, contracts with other parties pertaining to the design, bidding and/or construction of the Project, including without limitation, contracts with the Architect and testing/inspection service providers or others. The CM acknowledges that accomplishing the Project objectives of the District requires the CM and other parties under Project-related contracts with the District to each completely and timely perform in accordance with their respective contractual obligations and in a collaborative manner consistent with the Project objectives of the District. The CM acknowledges and agrees that its performance of the obligations under this Agreement in a complete and timely manner and in a collaborative manner with other Project participants is a material obligation of the CM under this Agreement. The CM agrees that the scope of the CM's services under this Agreement shall include its attendance, participation and guidance in meetings and conferences with the various parties engaged in any element of the design, bidding, construction, close-out or end-use occupancy of the Project as requested or directed by the District.
- 2.4 CM Standard of Care. At all times, CM shall use its best professional skill and judgment, acting with due care, in accordance with professional standards of care, the terms of this Agreement and the Laws. CM's services hereunder shall be provided and completed promptly and in such a manner as to avoid hindrance, interruption or delay to the orderly progress and timely completion of the CM's review of Project Design Documents, Contractor

bidding and Project construction to permit occupancy of the Project in accordance with the District's objectives. The CM shall be liable to the District for all consequences of the CM's failure to perform and complete its obligations under this Agreement.

- 2.5 CM Project Manager. CM agrees that, absent separation from employment with CM, Gina DeTolve shall serve as Senior Project Manager ("Project Manager"), Norman Raymundo as the Project Manager and Greg Millsbaugh as the Site Superintendent for the duration of the Project. CM shall not designate any other individual(s) to serve as Project Manager in connection with this Agreement without the prior consent and approval of the District, which may be granted, denied or conditioned in the District's sole discretion. The Project Manager shall be authorized to: (i) to act on behalf of the CM with respect to this Agreement; and (ii) to render binding decisions on behalf of the CM. The Project Manager shall be experienced and skilled in: (i) the management and coordination of contractors engaged in the construction of new buildings for public educational institutions; (ii) projects subject to the jurisdiction of DSA; and (iii) construction of similar projects.
- 2.6 Ultimate Authority of District. CM acknowledges that notwithstanding any other provision of this Agreement or any power granted to CM thereunder, District retains ultimate decision making authority and CM agrees to follow the direction given by the District Representative at all times during the Project and the term of this Agreement. This Agreement does not create an agency relationship and CM shall have no power to bind the District.
- 2.7 Non-Discrimination. CM shall not unlawfully discriminate against, or allow harassment of any employee or applicant for employment on the basis of the basis of actual or perceived race, religion, color, national origin, ancestry, age, marital status, pregnancy, physical or mental disability, medical condition, genetic information, veteran status, gender, gender identity, gender expression, sex or sexual orientation.
- 2.8 2018 SBHS Graduation. CM shall develop the Project Schedule in such a manner as to ensure that the Site (or portions thereof designated by the District), will be available for the Santa Barbara High School 2018 graduation ceremony (June 7, 2018), including preparation and rehearsals (June 4-6, 2018), in the customary tradition of the High School. CM shall ensure that the Site (or portions thereof designated by the District) is safe, operable, free of debris, equipment, and other hazards, and suitable for public use, during these dates. The District will provide CM with detailed information as to the portions of the Site needed and specific timing. This is a material provision of this Agreement.

ARTICLE 3: DISTRICT RESPONSIBILITIES.

- 3.1 District Information. The District shall provide full information to the CM regarding the Project, as applicable, including its Project objectives, Project schedule requirements, Project budget limitations and other constraints and requirements which may affect the Project Budget, time for completion of Project construction or Project scope. The District shall provide the CM with its Project Budgets for review by the CM.
- 3.2 Tests/Inspections. As required by applicable laws, rules or regulations, the District shall: (i) retain a Project Inspector ("Inspector") to provide construction observation; and (ii) retain test/inspection service providers to conduct Construction phase tests/inspections of materials/equipment forming a part of the Project. District shall have sole and exclusive discretion to select the Inspector and test/inspection service providers for the Project. The retention of the Inspector or the test/inspection Service Providers shall not affect the CM's obligations or rights set forth in this Agreement. The foregoing notwithstanding, as set forth

herein, the services of the CM include general oversight and coordination of the services of the Inspector and test/inspection service providers.

- 3.3 District Consultants. Except for design consultants retained by the Architect, other consultants required or desired by the District in connection with the Project shall be retained and paid for by the District, except to the extent such consultants are required as a result of the CM's default in its performance of obligations under this Agreement or other defects, deficiencies or failures in the CM's performance of obligations hereunder. Such other consultants include, without limitation, legal counsel, insurance/surety consultants, insurance consultants, and testing labs.
- 3.4 Facilities and Services for CM Use. During construction activities at the Site, the District will provide or will cause to be provided for use by the CM's personnel engaged in providing services under this Agreement at the Site, the following facilities and services: (i) trailer or other re-locatable facility, minimum 400 square feet with operable windows, heating/air conditioning and; (ii) restroom facilities; (iii) two desks, two desk chairs, two guest chairs per desk; (iii) conference table, minimum 6' length, minimum six conference table chairs; (iv) filing cabinets, minimum four with four drawers each; (v) erasable white board, approximately 5'Lx4"H; (vi) first aid kit; (vii) telephone/fax/internet service connections; (viii) water and power utility services; (ix) photocopier; and (x) utility service charges for telephone/fax/internet usage, maintenance and janitorial services for the trailer or other re-locatable facility. Except for the facilities and services set forth above or as otherwise herein provided, the CM shall, without adjustment of the Contract Price under this Agreement, procure, provide or otherwise secure such other facilities, services, or other items necessary for completion of the CM's obligations under this Agreement. Such other services and other items include without limitation, office supplies and consumables (paper, toner, etc.).
- 3.5 Copies of Plans and Prints. District will be responsible for providing, at its sole expense, copies of plans and prints necessary by CM in the performance of the Basic Services

ARTICLE 4: ADDITIONAL SERVICES

- 4.1 Additional Services. The following constitute Additional Services which the District may request the CM provide or perform without invalidating this Agreement.
- 4.1.1 Material Scope Changes. Services required or necessary as a result of material changes in the scope of the Project made by District after commencement of Project construction.
- 4.1.2 Termination of Architect or Contractor. Services required or necessary as a result of the default or termination of the Architect or Contractor.
- 4.1.3 Damage or Destruction. Except to the extent caused by the CM, services and consultation associated or necessitated by damage to the Project prior to completion by fire or other casualty.
- 4.1.4 Future Systems. Services relative to future systems, facilities or equipment not included within the scope of the Project as reflected in the Contract(s) awarded by the District for construction of the Project.
- 4.1.5 BIM. Services related to BIM (Building Information Modeling) management during the Construction Phase.

- 4.2 Additional Services Compensation. If the Additional Services described above are provided by the CM upon advance written request of the District and such Additional Services are not required as a result of fault or neglect of the CM, the CM will be compensated for Additional Services at the Personnel Rate Schedule ("the Rate Schedule") attached hereto as **Exhibit "B"** and as otherwise provided in this Agreement. Additional Services authorized by the District, but which are required as a result of fault or neglect of the CM shall not result in adjustment of the Contract Price under this Agreement nor any other compensation to the CM for completion of such Additional Services.

ARTICLE 5: CM COMPENSATION

- 5.1 Contract Price for Services. The Contract Price for the CM's performance of the Basic Services under this Agreement, exclusive of any Additional Services and Reimbursable Expenses, shall be a not-to-exceed fee of One Million Six Hundred Ninety Thousand Nine Hundred Fifty Three dollars (\$1,690,953.00), based on the hourly rates set forth in Exhibit "B." The Contract Price includes any and all administrative or overhead costs associated with or arising out of performance of the services under this Agreement, including without limitation, expenses for telephone (including cell phone), postage, delivery, office supplies, photographic film and development and travel to and from the offices of the CM and sub-consultants to the Site and the District's administrative offices. CM agrees that the Contract Price is sufficient to compensate CM for all Basic Services rendered during the Term of this Agreement. With the exception of any Additional Services requested by the District, CM waives any claim for compensation above and beyond the Contract Price for Basic Services.
- 5.2 Reimbursable Expenses. Unless authorized in advance in writing by the District, there shall be no expenses, costs or other charges arising out of or related to providing Basic Services or Authorized Services under this Agreement which are reimbursable to the CM. If any reimbursable expense is approved in advance by the District, the CM's reimbursement shall be limited to the actual costs, without mark-ups or multiples.
- 5.3 CM Invoicing. During the Term of this Agreement, the CM will submit monthly invoices for payment of the Contract Price. The CM's invoices shall set forth in detail the Basic Services and duly authorized Additional Services rendered during the previous month, including the number staff hours expended and corresponding hourly rates based on the rate schedule attached hereto as Exhibit "B", as well as any duly authorized Reimbursable Expenses. Invoiced amounts for Basic Services shall be limited to staff hours actually expended at the corresponding hourly rates. Further, the total amount invoiced for Basic Services during each Phase shall not exceed amounts allocated to each Phase of the CM's Basic Services as provided below. Upon District's request, the invoice shall be substantiated by CM's payroll and other cost records.
- 5.4 Allocation of Contract Price. The Contract Price for the Project is allocated to each Phase of the Basic Services as described below. The portion of the Contract Price to be disbursed by the District for each Phase or portion of Basic Services for the Project shall be limited by the allocation thereof as set forth below.

Pre-Construction Phase	Eight percent (8%) of Contract Price
Bidding Phase	Seven (7%) of Contract Price
Construction Phase	Eighty percent (80%) of Contract Price
Post-Construction Phase	Five percent (5%) of Contract Price

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

ARTICLE 6: INSURANCE AND INDEMNITY

6.1 CM Insurance.

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

6.1.2 Commercial General Liability and Property Insurance. CM shall purchase and maintain commercial general liability and property insurance as will protect CM from the types of claims set forth below which may arise out of or result from CM's services under this Agreement and for which CM may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than CM's employees; (ii) claims for damages insured by usual personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of such person by CM, or (b) by another person; (iii) claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; and (v) for completed operations. The CM policy of commercial general liability insurance shall include an additional insured endorsement naming the District, its Board of Education, officers, and employees as additional insureds.

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

6.1.4 Coverage Amounts. Minimum coverage amounts for policies of insurance obtained by the CM hereunder shall be as follows:

Insurance Policy	Minimum Coverage Amount
Workers' Compensation	In accordance with applicable law

Employer's Liability	One million dollars (\$1,000,000)
Commercial General Liability (including coverage for automobile liability and property casualty)	Two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) in the aggregate,
Professional Liability	Two million dollars (\$2,000,000) per claim and two million dollars (\$2,000,000) in the aggregate

6.1.5 Policy Endorsements; Evidence of Insurance. CM shall deliver Certificates of Insurance to the District Representative which evidence each of the policies of insurance in the minimum coverage amounts required hereunder. All policies of insurance required hereunder shall be issued by insurer(s) authorized to issue insurance by the State of California and to the reasonable satisfaction of the District. Coverages under each policy of insurance shall provide that such policy will not be materially modified or canceled without at least thirty (30) days (10-day for cancellation due to non-payment of premium) advance written notice to the District.

6.2 District General Liability Insurance. District shall obtain and maintain General Liability Insurance, or self-insured equivalent, covering District for claims of bodily injury, death or property damage arising out of the Project.

6.3 Builders Risk Insurance. During the progress of construction of the Project, the District and/or the Contractor shall obtain and maintain one or more policies of Builder's Risk Completed Value Insurance, or self-insured equivalent, covering all insurable work of the Project, including extended coverage and insurance against vandalism and malicious mischief, perils of fire, sprinkler leakage, acts of civil authorities, collapse and flood, to the full insurable value of the work of the Project and coverage for work of the Project whether in progress or completed. The District and CM waive all rights against the other for damages caused by perils covered by insurance obtained under this provision. The policy(ies) of Builders Risk Insurance shall contain express waivers of subrogation by the insurer(s) issuing such policy(ies) to the extent of damages or losses covered thereunder. If the District requires the Contractor to obtain a Builders Risk Insurance policy, such policy will contain such waiver of subrogation. The foregoing notwithstanding, the CM shall be liable for the payment of deductibles thereunder (without reimbursement from the District) to the extent that the acts, omissions or other conduct of the CM or its employees, agents or representatives cause a loss under the Builders Risk Insurance policy(ies).

6.4 Indemnity.

6.4.1 CM Indemnity of District. CM agrees to indemnify, without a duty to defend, and hold harmless the Indemnified Parties from all claims, demands, liabilities, losses, expenses, costs (including attorney and expert fees), damages, actions and causes of action arising out of negligent acts, errors or omissions in performance of this Agreement or the Project, including without limitation, claims for bodily injury, death, physical property damage (other than to the work of the Project itself and property damage covered by the Builders Risk Insurance obtained by the District or Contractor) and demands, damages, expenses, losses, liabilities or other claims; however, only to the extent caused by, and on a percentage basis of fault as ultimately determined by a court of competent jurisdiction. The CM's obligations hereunder shall survive termination of this Agreement.

6.4.2 District Indemnity of CM. The District shall indemnify, defend and hold harmless CM from all claims arising out of this Agreement, including without limitation, claims for bodily

injury (including death) and physical property damage (other than to the work of the Project itself and property damage covered by the Builders Risk Insurance obtained by the Contractor) which arise out of the active negligence or willful acts or omissions of the District.

ARTICLE 7: TERM; TERMINATION; SUSPENSION

- 7.1 Term of Agreement. The Term of this Agreement shall commence as of the date of the Board of Education's approval of this Agreement. The Term of this Agreement shall expire thirty (30) days after DSA issues its Project Certification for the Project reflecting completion of Project and construction in accordance with all Construction Documents issued in connection with the Project and applicable law, codes, regulations and rules.
- 7.2 Termination for Default. Either the District or CM may terminate this Agreement upon seven (7) calendar days advance written notice to the other if there is a default by the other Party in its performance of a material obligation hereunder and such default in performance is not caused by the Party initiating the termination. Such termination shall be deemed effective the seventh (7th) day following the date of the written termination notice, unless during such seven (7) day period, the Party receiving the written termination notice shall commence to cure it default(s) and diligently thereafter prosecute such cure to completion. If District exercises the right of termination hereunder, the amount due CM, if any, shall be based upon services incurred or provided prior the effective date of the District's termination of this Agreement, reduced by losses, damages, or other costs sustained by the District arising out of the termination of this Agreement or the cause(s) for termination of this Agreement. Payment of the amount due, if any, shall be made by District only after completion of the Construction Phase of the Project. CM shall remain responsible and liable to District for all losses, damages or other costs sustained by District arising out of termination pursuant to the foregoing or otherwise arising out of CM's default hereunder, to the extent that such losses, damages or other costs exceed any amount due CM hereunder for services.
- 7.3 District's Right to Suspend. The District may, in its discretion, suspend all or any part of the construction of the Project or CM's services hereunder; provided, however, that if the District shall suspend construction of the Project or CM's services hereunder for a period of sixty (60) consecutive days or more and such suspension is not caused by CM or the acts or omissions of CM, the Contract Price hereunder will be subject to adjustment to provide for actual costs and expenses incurred by CM as a direct result of the suspension and resumption of Project construction or CM's services hereunder.
- 7.4 District's Termination of Agreement for Convenience. The District may, at any time, upon seven (7) calendar days advance written notice to CM terminate this Agreement for the District's convenience and without fault, neglect or default on the part of CM. In such event, the Agreement shall be deemed terminated seven (7) calendar days after the date of the District's written notice to CM or such other time as the District and CM may mutually agree upon. In the event of the District's termination of this Agreement pursuant to the foregoing, the CM will be paid for services provided or performed as of the effective date of such termination. The CM shall not be entitled to recover consequential damages, including but not limited to anticipated profit or any other payments for the unperformed portion of services, if the District exercises its right to terminate this Agreement for the District's convenience.

- 7.5 CM Suspension of Services. If the District shall fail to make payment of undisputed portions of the Contract Price when due CM hereunder, CM may, upon seven (7) calendar days advance written notice to the District, suspend further performance of services hereunder until payment of such undisputed portion of Contract Price is received. In such event, CM shall have no liability for any delays or additional costs of Project construction due to, or arising out of, such suspension.

ARTICLE 8: GENERAL

- 8.1 Marginal Headings; Captions. The titles of the various Paragraphs and Articles of the Agreement are for convenience of reference only and are not intended to and in no way shall enlarge or diminish the rights or obligations of CM and District hereunder.
- 8.2 Cumulative Rights; No Waiver. Duties and obligations imposed by this Agreement and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or failure to act by the District hereunder shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default by CM.
- 8.3 Notices. Notices CM or District are required or desire to serve on the other shall be valid only if addressed to the other as set forth below or as modified by notice hereunder from time to time. Notices shall be effective only if by personal delivery requiring signature acknowledging receipt or by United States Mail, Certified, Return Receipt Requested, First Class, postage fully pre-paid. Notices effectuated by personal service shall be deemed effective as of delivery of such notices. Notices effectuated by United States Mail shall be deemed effective the third (3rd) working day after deposit in the United States Mail. Notices hereunder shall be addressed as follows:

If to District:

Meg Jetté
Assistant Superintendent of Business Services
Santa Barbara Unified School District
720 Santa Barbara St.
Santa Barbara, CA 93101

If to CM:

Dale Lundgren, President
Lundgren Management Corporation
26330 Citrus Street
Valencia, CA 91355

8.4 Disputes.

- 8.4.1 Continuation of CM Services. Except in the event of the District's failure to make undisputed payment of the Contract Price due CM, notwithstanding any disputes or disagreements between District and CM arising out of or related in any manner to this Agreement, the rights/obligations hereunder and/or the Project, CM shall continue to provide and perform services hereunder pending a subsequent resolution of such disagreements or disputes.

- 8.4.2 Venue. All legal actions arising out of this Agreement shall be commenced in the Santa Barbara County Superior Court, Anacapa Division.
- 8.5 Severability. If any provision of this Agreement is deemed illegal, invalid unenforceable or void by any court of competent jurisdiction, such provision shall be deemed stricken and deleted herefrom, but all remaining provisions will remain and continue in full force and effect.
- 8.6 Governing Law; Interpretation. This Agreement shall be governed and interpreted in accordance with the laws of the State of California. This Agreement is to be deemed to have been prepared jointly by the Parties hereto; any uncertainty or ambiguity existing herein shall not be interpreted against either Party but according to the application of rules of contracts generally.
- 8.7 Attorneys' Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.
- 8.8 Conflicts of Interest Prohibited. The CM shall not be permitted to submit proposals or otherwise seek contracts for the following services to be procured by the District in connection with the Project: Project Inspector or test/inspection services. If the CM identifies potential Project Inspector or test/inspection services in connection with the Project, the CM shall affirmatively and unequivocally represent and warrant to the District that neither the CM nor any person who holds any equity interest in CM's organization is an former or current holder of any equity interest in the firm identified and that neither the CM nor any holder of any equity interest in the CM's organization has any financial interest in the firm identified. Moreover, during the Project and the term of this Agreement, CM agrees not to act as a paid consultant to, or enter into any financial relationship with, Contractor or any Project subcontractor.
- 8.9 Disclosure of Financial Interests. If required by law, members of the CM's organization providing or performing any of the services or authorized Additional Services hereunder who are required to comply, shall comply with the requirements of the Political Reform Act (Government Code §81000 et seq.) and the financial disclosure requirements set forth in Government Code §87200 et seq.
- 8.10 CM Work Product. The entire work product of CM prepared or generated in connection with this Agreement is the property of the District. If the District exercises the right to terminate this Agreement pursuant to the terms hereof, upon request of the District, CM shall assemble and transmit to the District all of the work product of the CM generated, prepared, reviewed or compiled in connection with this Agreement and the services and authorized Additional Services hereunder. Upon request of the District, the CM shall make available to the District all work product completed or in progress at the time of such a request.
- 8.11 CM Accounting Records. CM shall maintain complete and accurate records of its personnel engaged in performing any service hereunder, personnel expenses and other costs incurred in connection with performance under this Agreement. Records shall be maintained on the basis of generally accepted accounting principles applied consistently and all CM's accounting and Project records shall be available for inspection, reproduction, and audit by

the District upon reasonable request at any time during CM's performance hereunder. Following completion of the Project and the Agreement or the termination of this Agreement, CM shall maintain accounting records for five (5) years or such longer period required by applicable law, during which time such records shall continue to be available to District.

8.12 Entire Agreement. This Agreement constitutes the entire agreement and understanding between the District and CM concerning the subject matter hereof, replacing and superseding all prior agreements or negotiations, whether written or verbal. No term or condition of this Agreement shall be modified or amended except by writing executed by the District and CM. This Agreement and the following enumerated documents constitute the entirety of the Agreement: Exhibit A (Basic Services) and Exhibit B (Hourly Rates). Notwithstanding incorporation of the CM Proposal herein by reference, in the event of any conflict or inconsistency between the terms of this Agreement and any provision of the CM Proposal, the terms and provisions of this Agreement shall govern and control.

IN WITNESS HEREOF, the Parties have executed this Agreement as of the date set forth above.

"District"

"CM"

Santa Barbara Unified School District

Lundgren Management Corporation

By _____

By _____

Title: _____

Title: _____

EXHIBIT A

SCOPE OF WORK

The CM's Scope of Work for the Project shall include the following:

1. Phase 1: Pre-Construction Phase -

- 1.1. Review of Design Documents. The CM's Project Manager shall review the Design Documents completed by the Architect or Architect's consultants for a complete understanding of the Project design intent and scope.
- 1.2. Value Engineering. CM shall pursue opportunities to create additional value by identifying options to reduce capital or life cycle cost, improve constructability and functionality, or provide operational flexibility, while satisfying the District's programmatic needs. Contractor shall develop Value Engineering Proposals ("VEP") for District and Architect approval for alternative systems, means, methods, finishes, equipment and the like that satisfy the general design criteria of the Project, but which result in savings of time or money in constructing or operating and maintaining the Project. Each VEP shall describe the proposed change, identify all aspects of the Project affected by the change, specify the cost or time savings to be achieved if the VEP is accepted, and detail any anticipated effect on the Project's service life, economy of operation, ease of maintenance, appearance, design or safety standards. Completion of each VEP, including District and Architect approval of each VEP, is to be achieved sufficiently in advance to permit Architect to secure DSA approval.
- 1.3. Constructability Review. The PM shall provide a constructability review as directed by the District. The CM's Project Manager shall prepare and transmit a report to the District with the results of CM's constructability review. CM shall coordinate with Architect and Contractor in connection with the constructability review. The CM shall ensure that all comments listed in the constructability review are adequately addressed or corrected by the Architect and the District.
- 1.4. Cost Estimating. At the request of the District, the CM shall provide cost-estimates for particular Bid Packages. The District will provide CM with all available cost estimates prepared by its Consultants. The cost estimate should include detail with supporting data and identify all allowances, contingencies, general condition costs, and fees. CM shall make appropriate recommendations to the District to reduce the estimate so that it is in-keeping with the District's Project Budget.
- 1.5. Master Project Schedule. The CM shall provide District an overall milestone Master Schedule inclusive of all design, consultant, utility, agency, construction, close-out and commissioning requirements to provide overall timeline goals and objectives of the District.
- 1.6. General Conditions Planning. The CM shall develop a plan for jobsite logistics, including general conditions planning, for review with the District.

2. Phase 2: Bid Phase - It is estimated that there will be multiple bid sets and prime contracts issued by the District to Trade Contractors in connection with this Project.

- 2.1. Development of Bid Packages. Based upon its review of the Design Documents and in consultation with the District Representative and the Architect, the CM shall develop Bid Packages suitable for bidding by Trade Contractors. The Bid Packages developed by the CM

shall be submitted to the District Representative for review and acceptance. The CM shall modify the Bid Packages as necessary to obtain the District Representative's acceptance of the entirety of the Bid Packages. The CM shall be responsible for incorporating and identifying all work, labor, materials and services required under each bid package so that the Project, as constructed by the Trade Contractors, is as depicted in the Design Documents. The bid packages prepared by the CM and submitted to the District Representative for review and acceptance are deemed a representation from the CM to the District that the entire scope of the Project, as reflected in the Design Documents approved by DSA, is reflected in and incorporated into the Bid Packages prepared by the CM. The CM shall be liable to the District for the costs and cost impacts to furnish, install or other provide any portion of the Project reflected in the DSA approved Design Documents but not incorporated into the scope of work of the bid packages developed by the CM.

- 2.2. Bid-Time Schedule. Based upon Bid Packages accepted by the District Representative, the CM shall develop and submit to the District Representative for review and acceptance by the District a Bid-Time Schedule that reflects all of the work of each Bid Package necessary to complete construction of the Project. The Bid-Time Schedule shall be prepared with the most recent edition of commercially available software designed specifically for the scheduling of construction projects which utilizes the critical path method of scheduling and which is acceptable to the District. The Bid-Time Schedule shall indicate the start/finish dates for the principal activities of each bid package necessary to complete construction of the Project. The principal activities of each bid package incorporated by the CM into the Bid-Time Schedule shall include without limitation, an identification of all Special Tests/Inspections required by the Construction Contracts or by applicable law, code, regulation or rule for each bid package and the date(s) for conducting and completing each identified Special Test/Inspection. The CM shall sequence, schedule and coordinate each bid package in the Bid-Time Schedule in a logical, reasonable and orderly manner so that construction of the Project is completed for the Project Budget and in conformity to the Project Schedule. The CM's Bid-Time Schedule shall reflect the most efficient, least time consuming and most financially economical schedule for completing Project construction. If the District's requirements for the Project include completion of construction of the Project in phases, the District's phasing requirements shall be set forth in the Bid-Time Schedule. The CM acknowledges that the Bid-Time Schedule prepared by the CM will be included in the bid documents for each bid package and that Trade Contractors bidding on a bid package will rely upon the reasonableness, completeness and accuracy of the Bid-Time Schedule prepared by the CM in developing their respective bid proposals.
- 2.3. Review and Assembly of Bid and Contract Documents. The CM shall review and recommend modifications to the District's standard forms of bid and contract documents. The CM shall assemble bid and contract documents for submission to the District Representative for review and acceptance on behalf of the District. The CM shall not issue any bid or contract documents for bidding until all of the bid and contract documents are accepted by the District Representative.
- 2.4. Advertising. The CM shall assist the District in development of advertisements of the availability of bid documents for bidding as required by the Laws. Upon the District Representative's approval of the CM-developed advertisements, the District shall place such advertisements in a newspaper of general circulation in Santa Barbara County and as otherwise required by the Laws. The CM shall also make recommendations to the District Representative for placement of notices and issuance of other communications for the purpose of publicizing the opportunity for bidding.

2.5. Contractor Pre-Qualification. If, as of the date of this Agreement, the District has completed a process for the pre-qualification of Contractors, the bidding advertisement developed by the CM shall specifically limit the bidding for the Project to the pre-qualified Contractors and the CM's review of bid proposals submitted shall include confirmation that the bidder submitting a bid proposal is a pre-qualified Contractor. If, as of the date of this Agreement, the District has not completed a pre-qualification process for the Contractors, the CM shall assist the District in pre-qualifying Contractors with use of the District's existing pre-qualification application. The CM shall make recommendations as to the timing of the prequalification. As directed by the District, the CM shall: (i) develop and place advertisement(s) in a newspaper of general circulation in Santa Barbara County of the availability of pre-qualification applications; (ii) develop and implement a program to inform potential bidders subject to pre-qualification and to encourage potential Contractors to engage in the pre-qualification process; (iii) review and evaluate responses to the pre-qualification application; and (iv) make recommendations to the District for selection of Contractors deemed pre-qualified to submit bid proposals subject to the pre-qualification process. Notwithstanding the CM's obligations pursuant to the preceding, the selection of potential bidders deemed pre-qualified shall be subject to the review and acceptance by the District Representative. Any pre-qualification process developed by CM shall comply with Public Contract Code § 20651.5 and other Laws.

2.6. Bid Process.

- 2.6.1. Dissemination of Bid Documents to Contractors. The CM shall establish a system for reproduction and dissemination of bid documents to Contractors and for maintaining records of the identities and contact information of the Contractors who have obtained bid documents. Electronic files and paper copies of the CM's records relating to potential Contractor bidders who have obtained the bid documents shall be made available to the District by the CM.
- 2.6.2. Pre-Bid Conference(s). The CM shall conduct pre-bid conferences, including the job walk(s), which are required or scheduled in the bid documents. The pre-bid conference shall include without limitation: (i) description of the Project and each bid package; (ii) description of the process for bidding and award of Contracts; and (iii) material requirements of the Contracts relating to bonds, insurance and similar administrative requirements of the Contracts, including requirements/information on prevailing wage rate obligations of the Contractors and their Subcontractors. The job walk shall provide Contractors with an overview of the Site and an understanding of the physical limitations and constraints affecting the work of the Project or portions thereof. The CM shall develop a process for monitoring attendance by potential Contractor bidders and their potential Subcontractors at job walk(s) and pre-bid conferences. The process developed by the CM shall include without limitation information relating to: (i) each potential Contractor bidder and each potential Subcontractor bidder to a potential Contractor bidder in attendance; (ii) the identity and contact information for the representative of each potential Contractor and each Subcontractor to a potential Contractor bidder (including address, telephone number(s), fax number(s) and email address); and (iii) whether the representative of each potential Contractor bidder and potential Subcontractors were in attendance for the entirety of the job walk or pre-bid conference, as applicable. The CM shall record and transcribe minutes of the pre-bid conferences and job walk(s). Minutes maintained by the CM shall be issued by the CM to all bidders who have theretofore obtained the bid documents, the District Representative, and the Architect

- 2.6.3. Pre-Bid Inquires; Addenda. The CM shall establish a system for intake of pre-bid inquires made by Contractors. The CM shall assist the District in responding to pre-bid inquires and circulating and/or publishing responses to each potential Contractor. The CM shall establish a system for dissemination of addenda to the bid documents to potential Contractors.
- 2.6.4. Opening/Reading of Bid Proposals. The CM shall, with assistance of the District Representative, conduct the public opening and reading of bid proposals. Upon completing the public opening and reading of bid proposals, the CM shall develop and submit to the District Representative written summaries of the results of bidding; the summary shall include identities of the bidders, the amount proposed by each bidder, including amounts proposed for alternate bid Items, if any, included in the bidding, and the identification of the apparent low bidder.
- 2.6.5. Review of Bid Proposals; Recommendations for Award of Contracts. The CM shall review the submitted bid proposals to determine: (i) whether the bidder is a responsible bidder; (ii) whether the bid proposal is responsive to material bidding requirements; and (iii) the price proposed for the base scope of work and for each alternate bid Item, if any, included in the bidding. The CM shall make recommendations to the District regarding: (i) rejection of a bid proposal based upon the "non-responsibility" of the bidder; (ii) rejection of a bid proposal for non-responsiveness to material bidding requirements; (iii) rejection of a bid proposal for any other reason; (iv) rejection of all bid proposals; and (v) award of Contract. To the extent that the bidding for a Contract includes alternate bid items, the CM shall make written recommendations for the District Representative for the alternate bid Items, if any, to be included in the scope of the Contract awarded by the District. The CM shall make written recommendations to the District Representative for award of the Contracts. The CM is not authorized to award any Contract; award of a Contract shall only be by action of the District's Board of Education.
- 2.6.6. Bid Protest. If bid protests are asserted in connection with the bid, the CM shall assist the District in the evaluation and disposition of all bid protests.

3. Phase 3: Construction Phase

- 3.1. Administration and Coordination of Contract and Project Construction. CM shall provide administrative, management and all other services necessary to administer the Contract(s) and to schedule, sequence and coordinate the work of the Contractor(s) (including subcontractors) during the Construction Phase of the Project so that the District's Project objectives (including without limitation, budgetary and time objectives) are achieved and that the work of the Contract is completed in strict conformity with the requirements thereof.
- 3.2. General. The CM's responsibilities include without limit: (i) Preparing and recommending issuance of Notice(s) to Proceed directing commencement of work under the Contract(s); (ii) scheduling, coordinating and conducting pre-construction and weekly construction meetings; recording, maintaining and distributing minutes thereof; (iii) in consultation with the Architect, developing and implementing procedures for the submission and processing of Submittals, Requests for Information ("RFI"), Change Orders, and Change Directives required by the Contract(s); (iv) in consultation with the District and the Architect, developing and implementing procedures for the handling and disposition of the Contractor's requests for information or clarifications; (v) establishing and implementing procedures for the transmittal and receipt of communications, drawings and other information between the District, District

Representative, CM, Architect, Inspector, test/inspection services and the Contractor(s); (vi) assisting the District in selection and retention of test/inspection service providers; and (vii) developing and providing weekly three-week look-ahead Project schedules to District.

- 3.3. CM Verification of Contractor Insurance, Permits and Bonds. The CM shall verify that all required permits and bonds have been obtained from the Contractor(s) and forwarded to the appropriate District personnel. The CM shall develop and implement procedures for the ongoing review of insurance coverages by Contractor(s) including review of additional insured endorsements.
- 3.4. CM Maintenance of Project Records. During the Construction Phase, the CM shall develop and implement procedures for the recording and maintenance of records relating to construction of the Project. The foregoing shall include, without limitation, the following: (i) Submittal Log which identifies each Submittal of the Contractor by Submittal number, portion of the work to which a Submittal relates, date of transmittal of the Submittal to the Architect; the date of the Architect's return of the reviewed Submittal; and if the Architect's review of the Submittal requires remedial/re-submittal, tracking of such remedial/re-submittal and the Architect's review(s) thereof; (ii) RFI Log which identifies each RFI submitted by the Contractor, the date of RFI submission, the date of transmittal of an RFI to the Architect for response, the date of the Architect's response to an RFI, and if applicable, the date of re-submission of an RFI and tracking the Architect's response to re-submitted RFIs; (iii) Change Order Log which identifies each change or potential change which may result in a Change Order, Change Orders approved by the District, and the progression of the development of a District approved Change Order through approval/ratification of each Change Order by the District's Board of Education; (iv) Architect's Supplemental Instructions ("ASI") Log identifying each ASI and the date of transmittal; and (v) Sketch Log identifying each Sketch and the date of transmittal.
- 3.5. Timely Response to Contractor Inquiries. CM shall take all steps necessary to facilitate timely responses to RFIs and other inquiries from the Contractor, in order to minimize any delay on the Project.
- 3.6. Monitoring of Construction Costs. CM will monitor on-going Construction Costs and advise the District of the financial condition of the Project by: (i) developing Project cash flow reports, forecasts and other financial reports to the District, including those reflecting variations between actual Construction Costs and the Construction budget and estimated costs to complete of unperformed Project activities; (ii) maintaining records reflecting the actual costs for activities completed or in progress, including records relating to work performed on a unit cost basis and additional work performed by the Contractor on a time and materials basis; (iii) monitoring and advising the District of costs pertaining to potential, pending and completed changes to the Contract; and (iv) advising and making recommendations to the District for adjustments to the Project Budget relative to actual or anticipated Construction Costs. The CM shall prepare and submit cost reports (which summarize and present in a logical format the information derived from (i)–(iv) above), to the District Representative on a monthly basis; provided that if the District Representative determines that more frequent cost reports are required, the CM shall comply with the directive(s) of the District Representative. The information compiled by the CM and reports generated by the CM relating to Construction Costs shall be in such detail, format and supported by substantiating data as required by the District Representative. In addition the extent of detail and the nature of the format of such reports, the information compiled by the CM and reports generated by the CM shall specifically indicate the original contract price of the Contract, the extent of adjustment to the original contract price for the Contract by District approved Change Orders and the extent of

potential further adjustment to the original contract price of the Contract as of the date of the CM's report based upon the Change(s) or potential Change(s) known to the CM at the time of the CM's preparation of a cost report.

- 3.7. Payments to Contractor(s). The CM shall develop and implement procedures for Contractor's submittal of applications for progress payments and the review, processing and disbursement of progress payments to Contractor, along with associated forms and reporting systems. The CM shall, along with the Architect and Inspector, review and certify to the District the amount due on Contractor's applications for progress payment. The CM's progress payment certifications shall constitute the CM's representation to the District that, based on CM's observations and professional evaluation at the Site, the data in each application for progress payment, and to the best of CM's knowledge, information and belief, the work has progressed to the point indicated in the application for progress payment and the quality of the work is in generally in accordance with the Contract, subject only to results of subsequent tests, inspections and other procedures, minor deviations from requirements of the Contract correctable prior to completion and any specific qualifications expressed by CM in its certification. CM's issuance of a certificate pursuant to the preceding shall be a representation that the Contractor is entitled to payment in the amount so certified. The CM's review and processing of applications for progress payment shall be undertaken and completed in a timely manner so that the progress payment due the Contractor is disbursed within the time permitted by the Laws without the District incurring interest or other penalties/liabilities. If interest or other penalties/liabilities accrue to the District as a result of the CM's untimely completion of its obligations relative to review/processing of Contractor's applications for progress payments, the CM shall be liable to the District for the same.
- 3.8. Substantial Completion; Punch list. In consultation with the Architect, Project Inspector and the District, the CM will assist in ascertaining the achievement of Substantial Completion for a Contract. The CM shall assist the Project Inspector and the Architect with inspection the work of the Contract to verify the Contractor's achievement of Substantial Completion. If upon such inspection, the Architect, Project Inspector and CM determine that the Contractor has achieved Substantial Completion, the CM shall promptly prepare and issue to the District a notification from the CM indicating that Substantial Completion has been achieved. If upon inspection of the work of the Project, Architect, Project Inspector or the CM determines that Substantial Completion has not been achieved, the CM will assist the Architect and Project Inspector in noting the conditions of the Project and the measures necessary to achieve Substantial Completion of the Project. Upon the Contractor achieving Substantial Completion of the Project, the CM will participate with the District, Project Inspector, Architect and other Consultants as necessary, to inspect the work to note Punchlist items to be completed as a condition to achieving Final Completion. The CM's Basic Services pursuant to the foregoing shall include, without limitation, the CM's scheduling and coordination of the Architect, Project Inspector, District Representative and other necessary Consultants at the Project walk to determine achievement of Substantial Completion, compilation of lists of completion items and/or Punchlist items and distribution of completion/Punchlist items to the Contractor, Architect, Project Inspector, District Representative and others responsible for completing any portion of the completion/Punchlist items. The CM shall monitor the Contractor's performance and completion of Punchlist items noted upon Substantial Completion. If the Contractor fails or refuses to complete any Punchlist item or fails to do so in a timely manner, the CM shall notify the District Representative in writing of such failure or refusal along with the CM's specific recommendations for remedial actions to have the Punchlist items completed. The CM shall implement such measures as directed or authorized by the District.

3.9. Project Progress.

- 3.9.1. Project Schedule. Based upon the Bid Time Schedule prepared by the CM pursuant to this Agreement and the Trade Contractors' separate construction schedules prepared by Trade Contractors in accordance with the terms of their trade Contracts, the CM shall develop a Project Schedule for District review and acceptance. The CM shall modify the Project Schedule as necessary to obtain the District Representative's acceptance of the entirety thereof. The Project Schedule accepted by the District shall be distributed by the CM to Trade Contractors and other Project participants. During the course of Project construction and based upon Trade Contractors' updated construction schedules, CM shall monitor and update the Project Schedule on a monthly basis or more frequently as may be requested from time-to-time by the District so that the District is kept fully informed at all times of the status and overall construction progress of the Project construction and the status of each Trade Contractors' construction progress. Where the actual rate of construction progress of the Project or a bid package is behind that indicated by the then current Project Schedule, CM shall advise and make recommendations to the District for remedial measures. The CM shall implement such measures as directed or authorized by the District.
- 3.9.2. Trade Contractors' Schedules. CM shall review the construction schedules prepared by each Trade Contractor and updates thereof for: (i) verification of conformity to the requirements established in the trade Contract for the bid package; (ii) verification that all necessary activities to complete construction of the bid package in accordance with the DSA reviewed Design Documents and the trade Contract for the bid package are reflected in the Trade Contractor's schedules; (iii) verification that the duration for construction activities are reasonable; and (iv) if required by the terms of the trade Contract for a bid package, verification that the Trade Contractor's schedules incorporate requirements for manpower and other resources necessary for the Trade Contractor's construction of the bid package. If the CM, upon review of a Trade Contractor's schedule is unable to verify any of the matters set forth above, the CM shall notify the District Representative in writing of such inability, along with recommendations for actions of the Trade Contractor or modifications to the Trade Contractor's schedules so that the CM can verify such matters. The CM shall implement such measures as directed or authorized by the District.
- 3.9.3. Coordination of Construction Activities. CM shall coordinate the activities of the Trade Contractors with each other and those of the CM, the Architect, Project Inspector, Test/Inspection Service Providers, Project Consultants and the District in conformity with the Project Schedule, including the coordination and sequencing of Trade Contractors' construction activities so that Site space is appropriately allocated and progress in accordance with the then current Project Schedule is maintained. A material obligation of the CM under this Agreement is the scheduling, coordination and sequencing the activities of the Trade Contractors in a manner so that construction of the Project is completed in accordance with the Project Schedule and within the Project Budget.
- 3.9.4. CM Responsibility for Construction Sequencing. Notwithstanding any provision of this Agreement to the contrary, if the District elects to construct the Project by multiple Trade Contractors, the CM shall be responsible for sequencing of the Trade Contractors in collaboration with the Contractors, but not construction means and methods.
- 3.9.5. Coordination of Deferred Approvals. If any portion of the Project is identified or designated in the Design Documents as a "Deferred Approval Item" or words of a similar nature, the CM shall verify that the time for the Contractor's design of the Deferred

Approval Item, the Architect's review of such design(s) and the DSA's review/approval of such design(s) is adequately addressed in the Construction Schedule. The CM shall monitor the actions of the Contractor and keep the Architect and the District informed so that progress of completing design and approval of Deferred Approval Items are maintained in accordance with the Schedule.

- 3.9.6. Progress Records. CM will maintain records of the progress of Project construction, including daily written progress reports and photographs reflecting the status of Project construction and percentage completion. The CM's daily records during Project construction shall include, without limitation, weather conditions, Contractors and their Subcontractors at the Site, manpower (i.e., number of personnel on Site), work accomplished, problems encountered and other matters materially affecting the Project, completion of the Project or Construction Costs.
- 3.9.7. Bi-Weekly Reports. Every other week during the Construction phase, the CM shall prepare and submit a written "snapshot" report to the District Representative which: (i) summarizes the progress made in the prior two (2) week period; (ii) evaluates compliance of the actual progress of Project construction relative to the then current Project Schedule; (iii) identifies and summarizes issues, events or other circumstances occurring in the prior two (2) weeks which has or may have an adverse impact to the Project Schedule or the Project Construction Costs; and (iv) other matters which may impact the Project Schedule or the Project Construction Costs. Each "snapshot" report shall be accompanied by a current updated Submittal Log, RFI Log, ASI Log, Sketch Log, and Change Order Log maintained by the CM pursuant to the terms of this Agreement. Such "snapshot" reports and current updated Logs shall be submitted by the CM to the District Representative on the first and third Monday of each month during the Construction Phase.
- 3.9.8. LEED Documentation. Contractor(s) are responsible for timely submission of any LEED related material and submittals throughout the duration of the Project. CM will assist the Architect and District's LEED consultation (if applicable) and will monitor and confirm Contractor's completion of required LEED documentation and forms. CM shall assist the Architect and/or the District's LEED consultant in the receipt and processing of all LEED documentation and forms to achieve LEED certification.
- 3.9.9. Final Completion. Upon the Contractor's completion of the Punchlist items, the CM in consultation with the Architect and the Project Inspector shall inspect the Project to verify the Contractor's completion of Punchlist items. If upon such inspection, the CM determines that Punchlist items remain to be completed, the CM shall provide the District Representative with a written itemization of all such remaining Punchlist items, along with the necessary corrective/remedial measures to complete such Punchlist Items. The CM shall implement corrective/remedial measures as directed or authorized by the District and the CM shall monitor the Contractor's performance until all Punchlist items are completed. Upon the Contractor's completion of the Punchlist items the Contractor's compliance with all requirements of the Construction Documents relating to the Contractor's Close-Out activities, the CM shall issue a certificate to the District verifying that Final Completion has been achieved.

3.10. Site Observations.

- 3.10.1. CM On-Site. During Project construction and at all times during which there are construction activities under the Contracts at the Site, CM shall have its Project Manager

or Field Superintendent at the Site daily, to observe, coordinate and manage the activities of the Contractor. CM shall maintain at the Site the Contract, drawings, specifications, approved Change Orders, Submittals, applicable codes, rules and regulations, and other written or electronic materials relating to the Project.

- 3.10.2. Construction Quality. The CM shall guard the District against defects and deficiencies in construction and workmanship on the basis of its Site observations, and a quality control program established and implemented hereunder to monitor the workmanship of the Contractor for conformity with: (i) accepted industry standards; (ii) applicable laws, codes, regulations, ordinances or rules; and (iii) and the requirements of the Contract.

3.11. Site Safety.

- 3.11.1. District Safety Requirements. Prior to any performance of Work at the Site, the CM shall review the District's safety requirements for the Project. The CM shall identify measures to be implemented by the CM to verify that the Contractor implements the District's safety requirements and a safety program during the construction of the Project.

- 3.11.2. Enforcement of Contractor Safety Programs. The CM shall monitor the Contractors' compliance with their respective safety programs. By undertaking the obligations hereunder, CM shall not be deemed to have assumed responsibility for the inadequacy or insufficiency of safety programs implemented by Contractor, but the CM is responsible for verifying that the Contractor has established a safety program and that the Contractor implements its safety program during construction of the Project.

- 3.11.3. Safety Violations; Safety Conditions. In the event of a safety violation or other unsafe conditions on or about the Site which have an immediate potential or actual adverse effect on life or property, the CM is authorized, without prior notice to the district or prior directive of the District, to take all actions deemed necessary and appropriate by the CM under the then existing circumstances to prevent or mitigate such actual or potential adverse effect.

- 3.11.4. Site Safety Safeguards. The CM shall routinely conduct Site observations.

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3.12. Prevailing Wage Rates. The CM shall take cognizance of violations of prevailing wage rate requirements and hours of work limitations. If the CM becomes aware of any violation of required prevailing wage rates or limitations on hours of work, the CM shall notify the District Representative in writing of same and shall provide the District Representative with recommended actions relative to such violations. The CM shall implement and enforce such actions as directed or authorized by the District Representative.

3.13. Changes and Claims.

3.13.1. Coordination of Changes. The CM acknowledges that changes to the scope of work of the Contract(s) during construction of the Project are likely to increase the Project Construction Costs, extend time for completing Project construction and prevent the District from realizing its Project objectives. Accordingly, the CM acknowledges and agrees that a material obligation of the CM under this Agreement is management of circumstances which may give rise to a change to the Contract in a manner so that the costs and time for implementation of changes are minimized. The CM shall, as expediently as possible, coordinate and disseminate correspondence, drawings and other materials by and between the Contractor, the District, District Representative, Inspector, test/inspection service providers and the Architect relating to changes to the Contract. CM shall coordinate and oversee the Contractor's performance of changes authorized by the District to ensure timely and full completion of Changes. CM will maintain a log or other written records to monitor the pendency and disposition of changes and Change Orders to keep the District advised of the status of the same and the actual or potential impact of any particular change or Change Order or the cumulative effects thereof on Construction Costs or time for completion of Project construction.

3.13.2. CM Notice to District; District Decisions. Upon the CM becoming aware of circumstances which will or may result in the issuance of a Change Order, the CM shall: (i) notify the District Representative of such circumstances in a prompt and timely manner taking into account the then existing circumstances of Project construction including without limitation the progress of Project construction, safety and factors affecting completion of the potential change; (ii) develop, in conjunction with the Contractor and the Architect, alternative approaches to addressing the circumstances resulting in a potential change; (iii) provide the District Representative with written or graphic materials describing, in detail, alternative approaches to the potential change, along with time and cost impacts of each alternative; and (iv) provide the District Representative with written recommendations for the District's selection of an approach to address the potential change along with a description of the basis for the CM's recommendation. Upon receipt of all of the foregoing described notices and other information, the District shall make timely decisions regarding authorization to proceed with a change; the District's decisions shall be communicated in writing to the CM through the District Representative.

3.13.3. Compilation of Change Orders for Board Approval. When multiple Change Orders are to be presented for Board approval, the CM shall compile all such Change Orders into a single change order for review and approval by the Board.

3.13.4. Processing of Changes and Change Orders. CM shall assist the District and Architect in the preparation of Change Orders authorized by the District and distribute the same for execution by the Contractor, District, Architect and Inspector. The CM is not authorized, without the prior consent and authorization of the District, to effectuate or authorize any change to the Contract. The CM shall be liable to the District for all direct and consequential costs, losses or damages resulting from the CM's direction or authorization

to effectuate a change to the Contract without the prior direction and authorization of the District. The CM shall administer submission of District authorized changes to regulatory agencies with jurisdiction over such changes by the Architect/Inspector, and the CM shall confirm, in writing, to the District Representative that all necessary regulatory approvals have been obtained for District-authorized changes. If necessary regulatory approvals have not been obtained or not obtained in a timely manner to avoid delay to Project construction and/or to avoid additional Project Construction Costs, the CM shall notify the District Representative of such circumstances along with recommendations for securing such necessary approvals. The CM shall implement, enforce and/or monitor recommendations accepted by the District, as directed or authorized by the District Representative.

3.13.5. Claims Handling. CM shall develop processes and procedures for the review, evaluation, processing and disposition of claims asserted by Contractor; CM will make recommendations to the District as to merit, handling and disposition of Contractor claims. The CM's obligations relating to Contractor's claims shall continue notwithstanding completion of the work under the Contract or completion of Project construction, until all Contractor claims are fully and finally resolved.

3.13.6. Emergencies. In the event of emergency circumstances actually or potentially resulting in harm/injury to persons or property, the CM shall, without prior notice or authorization of the District, take such actions or direct such actions by Contractor as necessary to prevent or mitigate harm/injury to persons or property.

4. Phase 4: Post-Construction Phase

4.1. Building Systems; Equipment Start-Up/Commissioning. The CM shall schedule, coordinate and observe the start-up and testing of utility services systems, Project equipment and other building systems, for occupancy readiness and use, with the District Representative, Commissioning Agent, District maintenance and operations staff, the Architect, the Architect's Design Consultants, the Contractor and Subcontractors, as appropriate. As directed or authorized by the District, the CM shall (i) assist in trouble-shooting performance failures/limitations; and (ii) assist in re-testing corrections/remedial work to utility/building systems or equipment.

4.2. Review and Transmittal of Contractor Close-Out Documents. The CM shall receive from the Contractor(s) the close-out documents, which are to include operations/maintenance manuals, as-built drawings and all other items to be submitted by the Contractor under the terms of the Contract upon completion of obligations under the Contract. The CM shall, in conjunction with the Architect and the Inspector, review the Contractor's close-out documents to determine conformity with requirements of the Contract. If the CM determines that the Contractor's close-out documents are not in conformity with requirements of the Contract, the CM shall take necessary actions to secure compliance with the requirements of the Contract. Within ten (10) days of receipt from the Contractor, the CM shall deliver to the District Representative all of the Contractor's close-out documents, except for the Contractor's as-built drawings which the CM shall transmit to the Architect for the Architect's preparation of the record drawings. The Contractor's close-out documents shall be organized and indexed. Unless otherwise agreed, the Contractor's close-out documents should be provided in the format specified in the Contract. The CM shall take actions necessary for the Architect, Inspector and the Contractor to prepare and submit their respective final reports to DSA.

- 4.3. CM Project Records. Within thirty (30) days of the date of issuance of a Certificate of Final Completion, the CM shall assemble and deliver to the District all of the Project records maintained by the CM relating to the Contract in a format designated by the District. The Project records shall be organized and indexed. Notwithstanding any provision of this Agreement or the Laws to the contrary, all documents, work product, whether of a tangible or intangible nature, whether in draft or final form and whether recorded in writing or any other medium, including without limitation, electronic files relating to the Project or this Agreement are the sole and exclusive property of the District. The CM may, at its sole cost and expense, make copies of Project records delivered to the District pursuant to the foregoing, provided that such copies of the Project records shall be solely for archival record purposes and no other purpose.
- 4.4. Contractor's Post-Construction Obligations. If the Contractor is obligated under the terms of its Contract to provide work, labor materials or services after completion of Project construction, the CM shall manage Contractor's post-construction activities for conformity with requirements of the Contract. The CM shall secure Contractor's compliance with post-construction obligations.
- 4.5. Project Reports. The CM shall monitor the filing of DSA reports and other actions required by the Laws to be undertaken by the Architect, Inspector or Contractor during Project construction and/or upon completion of Project construction. If the Architect, Inspector or Contractor have not filed reports or taken other actions required during Project construction and/or upon completion of Project construction, the CM shall secure compliance by the Architect, Inspector or Contractor with regard to such requirements. The CM will assist the District in completion of actions to be undertaken by the District upon completion of Project construction, including without limitation preparation of Notices of Completion for the Contract.
- 4.6. Project Occupancy. The CM shall assist the District in securing an occupancy permit for the Project or portions thereof as designated by the District. The scope of the foregoing may include the following: (i) accompanying government officials during inspections of the Project; (ii) preparation and submittal of documentation required by governmental agencies to establish completion of Project construction; and (iii) other similar activities and tasks.
- 4.7. DSA Project Certification. The CM shall assist the District in filings, discussions and other actions necessary for DSA Project Certification upon completion of Project construction certifying to completion of the Project in accordance with the Construction Documents and applicable laws, codes, regulations and/or rules. Obtaining DSA Project Certification is a material obligation of the CM under this Agreement.

EXHIBIT B

Staff rates shall be as follows during the Term of this Agreement:

Lundgren Management Hourly & Additional Services Rates:

Vice President of Operations	per hour	\$ 155.00
Senior Project Manager	per hour	\$ 138.00
Project Manager	per hour	\$ 130.00
Project Engineer	per hour	\$ 102.00
Senior Contracts Administrator	per hour	\$ 105.00
Scheduling Manager	per hour	\$ 120.00
Estimator	per hour	\$ 140.00
Project Superintendent	per hour	\$ 130.00
Constructability Reviewer	per hour	\$ 125.00
BIM Facilitator	per hour	\$ 148.00