

**SIERRA SANDS UNIFIED SCHOOL DISTRICT**

**Board of Education  
Special Meeting**

**To be held concurrently with the regular meeting of  
August 19, 2010  
Ridgecrest City Council Chambers  
100 West California Avenue  
[www.ssusd.org](http://www.ssusd.org)**

*We, the members of the Board of Education of the Sierra Sands Unified School District, are committed to providing the highest quality education in a safe environment to all K-12 students. We believe the school shares with the family, church, and community the responsibility for developing life-long learners who are responsible, productive citizens.*

**A G E N D A**

CALL TO ORDER AND PLEDGE TO THE FLAG

7:00 p.m.

Amy Covert  
Judy Dietrichson  
Bill Farris  
Tim Johnson  
Tom Pearl. Vice President/Clerk  
Kurt Rockwell, President  
Michael Scott  
Charlotte Flatebo, Student Member

Joanna Rummer, Superintendent

MOMENT OF SILENCE

1. ADOPTION OF AGENDA

2. POLICY DEVELOPMENT AND REVIEW

2.1 Adoption of Board Policy BP 5117.1, Open Enrollment Act – Romero Bill Transfer

3. CONSTRUCTION ADMINISTRATION

3.1 Approval of the Terms and Conditions of the Construction Management (At-Risk) Services Agreement for the Career and Technical Education Building at

4. ADJOURNMENT

## 2. POLICY DEVELOPMENT AND REVIEW

### 2.1 Approval of Board Policy 5117.1, Open Enrollment Act, - Romero Bill Transfers

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**BACKGROUND INFORMATION:** Initially part of the state’s federal Race to the Top application for funding, the Open Enrollment Act (Education Code 48350-48361) added by SBX5 4 Romero (Ch. 3, Fifth Extraordinary Session, Statutes of 2010) was signed into law on January 7, 2010. This legislation adds to the existing alternative attendance options, including intradistrict open enrollment (Education Code 35160.5), “Allen bill” transfers based on parent/guardian employment (Education Code 48204), interdistrict attendance permits (Education Code 46600-46611), and NCLB transfers from Title I program improvement schools (20 USC 6316; 34 CFR 200.44).

**CURRENT CONSIDERATIONS:** In January of this year, the California legislature adopted the Open Enrollment Act (the “Romero Bill”), which allows pupils attending a school identified by the California Superintendent of Public Instruction as being subject to the requirement of Education Code section 48350, “an open enrollment school,” to apply to enroll in higher achieving schools, regardless of their residence. The Romero Bill essentially creates another system of alternative attendance on top of intra-district open enrollment, “Allen Bill” transfers, inter-district attendance permits, school districts of choice, and Title I transfers. Since the proposal to accept open enrollment applications for the 2010-2011 school year was contrary to the language in the statute, emergency regulations allow but do not require school districts to consider accepting Open Enrollment Act transfer applications for the 2010-2011 school year. Education Code 48354 and 5 CCR 4702 specifies that the district of residence must notify parents each year on the first day of instruction for each student attending a school on the open enrollment list of the option to transfer according to regulations stated in the statute.

**FINANCIAL IMPLICATIONS:** None

**SUPERINTENDENT’S RECOMMENDATION:** The recommendation of the superintendent is to submit the new Board Policy 5117.1, Open Enrollment Act – Romero Bill Transfers for adoption by the Board of Education as it reflects current law.

## **Students**

### **OPEN ENROLLMENT ACT – ROMERO BILL TRANSFERS**

California state law and the rules and regulations of the State Board of Education state a preference that students attend schools in their districts of residency. The Open Enrollment Act (Education Code section 48350 et seq.) allows students attending a school identified by the California Superintendent of Public Instruction as being subject to the requirements of Education Code section 48350 et seq. (an “open enrollment school”) to submit an application for enrollment in another higher performing school. Interdistrict transfer requests made pursuant to the Open Enrollment Act ("Romero Bill transfers") shall only be approved by the Superintendent or designee in accordance with the provisions of this policy and its implementing regulations.

### **Definitions**

For the purposes of this policy, the following definitions apply:

"Open Enrollment school" means any school included on the annual Open Enrollment List of 1,000 Schools issued by the California State Superintendent of Public Instruction. The process for identifying and including schools on the Open Enrollment List of 1,000 Schools is described in Education Code section 48350 et seq.

"School district of enrollment" means a school district other than the school district in which the parent/guardian of the student resides, but in which the parent of the student nevertheless intends to enroll pursuant to Education Code section 48350 et seq.

"School district of residence" means a school district in which the parents of a student resides and in which the student would otherwise be required to enroll pursuant to Education Code section 48204.

### **Overview and Application Timelines**

1. Priority enrollment at all District schools and programs shall be given to pupils residing within the District and requesting transfer pursuant to the District's intradistrict transfer policy (BP 5116.1).
2. Only students attending a designated "open enrollment school" are eligible to apply for a transfer under this policy.

**Students**

**OPEN ENROLLMENT ACT – ROMERO BILL TRANSFERS**

3. Romero Bill transfer applications will be accepted until January 1 of the school year preceding the school year for which the student is requesting a transfer. Any application submitted after January 1 will not be accepted or reviewed.
4. This application deadline does not apply to a transfer request if the parent, with whom the student resides, is enlisted in the military and was relocated by the military within 90 days prior to submitting the application.
5. The District shall notify a Romero Bill applicant's parent and the school district of residence in writing by March 1 of the school year preceding the school year for which the transfer was requested as to whether the application was approved or denied.

**Basis for Approval or Denial of Romero Bill Applications**

1. The Superintendent or designee may not approve the initial application of a student requesting a Romero Bill transfer, if the transfer would require the displacement of any student who resides within the district. The Superintendent or designee may deny a Romero Bill transfer application under any of the following circumstances:
  - a. If approval of the transfer application would result in a District exceeding the long-term capacity of a program, class, grade level, or school building.
  - b. Approval of the transfer application would result in any adverse financial impact to the District.
  - c. If the Governing Board of the District determines that the transfer would negatively impact either of the following:
    - i. A court-ordered or voluntary desegregation plan of the district.
    - ii. The racial and ethnic balance of the District, consistent with state and federal law.

## **Students**

### **OPEN ENROLLMENT ACT – ROMERO BILL TRANSFERS**

2. The Superintendent or designee may not consider a student's previous academic achievement, physical condition, proficiency in the English language, family income, or any of the individual characteristics set forth in Education Code section 200 when considering whether to approve or deny a Romero Bill application.
3. In addition to the requirements set forth in this policy and its implementing regulations, students applying for a Romero Bill transfer into the District must meet all additional requirements for admission to a magnet program or program designed to serve gifted and talented students.
4. The District cannot accept an application for a Romero Bill transfer if the student's district of residence has prohibited the transfer as allowed under the Open Enrollment Act. (Cal. Educ. Code section 48355.)

### **Terms of Approval and Enrollment Priorities**

1. Any student whose Romero Bill transfer application is approved must be enrolled in a District school with a higher Academic Performance Index ("API") than the school in which the student was previously enrolled. Selection must be through a random, unbiased process that prohibits an evaluation of whether or not the student should be enrolled based on his or her individual academic or athletic performance or any other characteristic protected under Education Code section 200, except that students applying for a transfer under this policy shall be assigned priority as follows:
  - a. First Priority: Siblings of children who already attend the desired school.
  - b. Second Priority: Students transferring from a program improvement school ranked in decile 1 on the API as determined pursuant to Education Code section 48352(a).
2. If the number of students who request a particular District school exceeds the number of spaces available at that school, a lottery shall be conducted in the group priority order stated above to select students at random until all available spaces are filled.

**Students**

**OPEN ENROLLMENT ACT – ROMERO BILL TRANSFERS**

3. The initial application of a student for transfer under this policy shall not be approved if the transfer would require the displacement from the desired school of another pupil who resides within the attendance area of that school or is currently enrolled in that school.

**Accepted Applications**

1. If an application is accepted, the student may enroll in the school or program approved by the District at the start of the school year immediately following the approval of the application. Once enrolled, the student is not required to re-apply to remain enrolled.
2. For any student approved for a Romero Bill transfer, the District shall accept credits toward graduation that were awarded to the student by another school district and shall graduate the student, if the student meets the graduation requirement of the District.
3. Once enrolled, a student attending school in the District pursuant to a Romero Bill transfer shall be subject to all rules, policies and regulations applicable to all students in the District.

**Rejected Applications**

1. If an application is rejected, the District shall notify the applicant parent and school district of residence in writing that the application has been rejected. Such notification shall state the reason(s) for the rejection.
2. The District's decision regarding the rejection of a Romero Bill transfer application is final. There is no right of appeal to the county office of education.

**Notice of Eligibility to Transfer**

1. On or before the first day of school each year, or if later, on the date the District received notice of program improvement, corrective action, or restructuring status under federal law, the District shall provide the parents or guardians of all students enrolled in a designated "open enrollment school" notice of the option to transfer to another public school in the District or another school district.

**Students**

**OPEN ENROLLMENT ACT – ROMERO BILL TRANSFERS**

**Prohibiting or Limiting the Number of Transfers Out of the District**

1. In the event that a school within the District is designated as an "open enrollment school," the District may prohibit or limit the number of students who transfer out of the District under the Romero Bill, if the Governing Board of the District determines that the transfer would negatively impact either of the following:
  - a. A court-ordered or voluntary desegregation plan of the District.
  - b. The racial and ethnic balance of the District consistent with federal and stated law.

*Legal References:*

EDUCATION CODE

*Education Code 200*

*Education Code 48204*

*Education Code 48350-48361*

*CCR 4700-4703*

**Policy**

Adopted: August 19, 2010

**SIERRA SANDS UNIFIED SCHOOL DISTRICT  
RIDGECREST, CA**

### 3.. CONSTRUCTION ADMINISTRATION

#### 3.1 Approval of the Terms and Conditions of the Construction Management (At-Risk) Services Agreement for the Career and Technical Education Building at Burroughs High School (*Goal #3*)

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**BACKGROUND INFORMATION:** On May 6, 2010, the board ratified a preconstruction services agreement with Barnhart-Balfour Beatty, Inc. for preconstruction services related to the Career and Technical Education Building at Burroughs High School. Preconstruction services, including a review of design documents, estimation/cost evaluation of plans and specifications, constructability review, scheduling for construction as well as design change, coordination of construction schedule and phasing plan, bidding services, bidder outreach, and the preparation and submittal of a proposed guaranteed maximum price are close to completion.

**CURRENT CONSIDERATIONS:** The district is proposing entering into a Construction Management (At-Risk) Services Agreement with Barnhart-Balfour Beatty, Inc. for the Career and Technical Education Building at Burroughs High School. As outlined in the preconstruction agreement and this construction management agreement, the Construction Manager, in cooperation with the Architect, will assist the District and its consultants in the bid opening, tentatively scheduled for September 21, 2010 at 2 PM. They will assist with evaluation of the bids for completeness, scope compliance and responsiveness, responsibility, price, including alternate process and unit prices, and will make a formal report to the District with regard to the potential award of the Trade Contracts. Per Article 2, within 21 calendar days after the Trade Bid Packages are competitively bid and open, the Construction Manager shall propose a Guaranteed Maximum Price (GMP) for the Project. The District shall then review that proposal, undertake negotiations, and accept or reject the proposal. If the proposal is not accepted the GMP shall not be effective and this Agreement shall automatically terminate. The Construction Manager shall not be entitled to any compensation beyond the prior preconstruction agreement, unless the District accepts the GMP (Article 3.3-3.5)

**FINANCIAL IMPLICATIONS:** The total cost of this project, including the GMP and other costs outside of this agreement, is \$6,000,000. Funding is the result of a Proposition 1D grant of \$3,000,000, and a related loan of \$3,000,000. Funding for this project has been received from the state.

SUPERINTENDENT'S RECOMMENDATION: It is recommended that the board approve the Construction Management Services (At-Risk) agreement with Barnhart-Balfour Beatty, related to the construction of the Career and Technical Education building at Burroughs High School, as presented.

## **CONSTRUCTION MANAGEMENT (AT-RISK) SERVICES AGREEMENT**

This Construction Management Services Agreement (“Agreement”) is made and entered into between the SIERRA SANDS UNIFIED SCHOOL DISTRICT (hereinafter “District”) and BARNHART-BALFOUR BEATTY, INC. (hereinafter “Construction Manager”) for construction management services to be performed in an “at-risk” capacity, while serving as an agent of District to facilitate cost effective and complete design, thorough packaging of complete scopes of work for each separate trade involved, and management of separate trade contracts awarded after public bidding, to ensure timely completion of all work for an agreed Guaranteed Maximum Price, for completion of the BURROUGHS HIGH SCHOOL ENGINEERING AND DESIGN CTE FACILITY PROJECT (“Project”), located at 500 E. French Avenue, Ridgecrest, California (“Property”), through the “Construction Manager At-Risk” construction project delivery method.

### **RECITALS**

**WHEREAS**, the Property is owned by the United States Navy, which has granted to the District a leasehold thereon for a period of thirty-five (35) years where the District intends to build and operate the Project;

**WHEREAS**, District has retained Westberg + White (“Architect”) to prepare Plans and Specifications for the Project, which have been approved by the Division of the State Architect (“DSA”) under Application # 03-112192, File # 15-42, and have been adopted by the District’s Governing Board (“Construction Documents”);

**WHEREAS**, District and Construction Manager intend that Construction Manager will facilitate and guarantee construction of the Project for the Guaranteed Maximum Price, thorough packaging of complete scopes of work for each separate trade involved, and management of separate Trade Contracts awarded after public bidding, to ensure timely completion of the Project for the Guaranteed Maximum Price;

**WHEREAS**, a preliminary budget has been established for the Project, which is set forth in Exhibit A hereto;

**WHEREAS**, District and Construction Manager contemplate and intend that each and all of the Trade Contracts publicly bid by Construction Manager and awarded by the District shall be assigned from the District to Construction Manager, following execution of this Agreement, and a copy of the Assignment Agreement to be entered into between District, Construction Manager, and each Trade Contractor is attached hereto as Exhibit B;

**WHEREAS**, District desires to receive, and Construction Manager desires to provide, a guaranteed date for completion of the Project, and Construction Manager therefore does guarantee completion of the Project on or before a date to be agreed upon in the Master Construction Schedule, including the date of Project completion, as required by section 3.1(e) below.

**WHEREAS**, District and Construction Manager have entered into a Preconstruction Services Agreement for the Project, effective May 7, 2010, the covenants and conditions of which have been performed and completed by and between District and Construction Manager; and,

**WHEREAS**, Construction Manager will provide a Guaranteed Maximum Price for construction of the Project (“GMP”) as defined in Article 3 hereof.

**NOW, THEREFORE**, based upon the covenants and conditions set forth herein and the payments provided herein, the parties agree as follows:

Each and all of the foregoing Recitals are incorporated herewith by reference, are material terms of the Agreement, and are agreed to by District and Construction Manager.

**ARTICLE 1: CONSTRUCTION MANAGER’S SERVICES AND RESPONSIBILITIES.**

Construction Manager represents to District that it has experience and expertise in construction supervision; Trade Bid Package preparation and scoping; bid evaluation; project scheduling; cost benefit analysis; claims review and negotiation; and general management and administration of construction projects. Construction Manager covenants to provide its best skill and judgment in furthering the interests of District in the management of the construction of the Project. Construction Manager shall be responsible, to the extent described in this Agreement, for ensuring that the Project is properly completed in a competent and professional manner, in conformance in all material respects with the Construction Documents within the District’s budget and the GMP, and in accordance with the District’s schedule for timely completion of the Project. The Construction Manager’s services under this Agreement shall continue with all diligence until the Project is completed. Construction Manager shall not bid for or perform any construction work on the Project, including any work involved in any of the Trade Bid Packages and Trade Contracts. Construction Manager shall comply with any and all applicable prevailing wage and apprenticeship laws, including without limitation Article 2 (commencing at Section 1770), Chapter 1 of Part 7, Division 2 of the California Labor Code, Article 3 (commencing at Section 1810), Chapter 1 of Part 7, Division 2 of the California Labor Code, Chapter 4 (commencing at Section 3070), Division 3 of the California Labor Code, and any Labor Compliance Program instituted by or on behalf of District. Construction Manager agrees to furnish efficient business administration and management services and to perform in an expeditious and economical manner consistent with the interests of District. Construction Manager agrees that in the event that District seeks state funding for the Project and the State Allocation Board (SAB) or other state agency adopts a policy for construction management at-risk services applicable to the Project, subject to reduction of the Scope of Work to reduce the actual cost of the Project, as impacted by such policies, to ensure that the GMP does not increase, Construction Manager shall comply with any new Policy applicable to construction management at-risk services and the Project, and this Agreement shall be revised to comply with any new Policy if the District is required to comply with a new Policy as a condition for receiving any funding for the Project.

1.1. PRECONSTRUCTION SERVICES PHASE.

1.2. [This section intentionally left blank.] BID/AWARD SERVICES PHASE.

Services to be provided by Construction Manager during the Bid/Award phase for the Project include, but are not limited to, all those set forth in the Preconstruction Services Agreement for the Project, effective May 7, 2010, as well as the following:

1.2.1. Pre-Bid Conference(s). In conjunction with the Architect, District, and its consultants, Construction Manager shall conduct the pre-bid conference(s) and site visit meetings with prospective bidders. These conferences will be a forum for the Construction Manager, District, its consultants, and Architect to present the Project requirements to the bidders, including prequalification requirements, as appropriate, and will familiarize bidders with the Project, bid documents, management techniques, and with any special systems, materials, or methods.

1.2.2. Bidder Inquiries. Construction Manager shall coordinate communications related to bidder inquiries and seek resolution to the questions from the appropriate party and provide timely forwarding of such information to the Architect for incorporation into the addenda for issuance to the prospective bidders, plan rooms, consultants, and District.

1.2.3. Addenda Review. Construction Manager shall coordinate the addenda process with the Architect and District, and will provide a review of each addendum during the bid phase for completeness, time, cost, or constructability impact, and make appropriate comments.

1.2.4. Bid Evaluation and Recommendation for Award. The Construction Manager, in cooperation with Architect, will assist District and its consultants in the bid opening, evaluation of the bids for completeness, scope compliance, responsiveness, responsibility, price, including alternate prices and unit prices, and will make a formal report to District with regard to the potential award of the Trade Contracts. The Construction Manager shall prepare bid tabulations, provide post analysis summaries, and make recommendations to District for award of Trade Contracts or rejection of bids. Construction Manager shall forward a copy of the proposed Trade Contract to the District for each bidder recommended by the Construction Manager. Construction Manager shall certify in writing that the number and breakdown of Trade Bid Packages for the Project represents all the work in the plans and specifications for the Project, and that no additional contracts are foreseen to complete the necessary work for the Project. In the event the Trade Contracts and any work deferred for the future does not represent 100% of the work and/or exceeds the SAB's Cost Standards (if applicable), the additional necessary work will be offset as addressed in Article 3.

1.2.5. Re-bidding. Construction Manager shall not allow individual Bid Package category re-bids except under one or more of the following circumstances:

- (a) If no bid is received in a category.
- (b) If the Project, after bids are received, is not within the Project Budget as established by the District (hereinafter "Project Budget").

- (c) An insufficient number of bids have been received, which has resulted in an exorbitantly high bid in a category.
- (d) As otherwise authorized by the District.

Should one or more of the aforementioned circumstances occur, then a category may be re-bid with only alteration to bid documents which are allowable by state agencies having jurisdiction over the Project, OPSC, SAB, DSA and to which the Architect and District agrees.

The District may, in its sole discretion, reject all bids and require ALL packages for the entire Project to be re-bid.

In the event the bids exceed the SAB cost standards or Project Budget by ten percent (10%) or more, or District authorizes re-bidding of all or portions of the Project. Construction Manager shall cooperate with the Architect in revising the scope and the quality of the work as required to reduce the construction costs for the Project. Construction Manager shall cooperate with District and Architect as necessary to bring construction costs within the Project Budget. Notwithstanding the foregoing, District is not obligated to authorize the re-bidding of all or any portions of the Project.

1.2.6. Purchase, Delivery, and Storage of Materials and Equipment. Construction Manager shall investigate and recommend a schedule for installation of District purchased materials and equipment which are a part of the Project and require long lead time procurement, and coordinate the schedule with the early preparation of portions of the contract documents. Construction Manager shall assist in expediting and coordinating delivery of all purchases. Construction Manager shall arrange for delivery, storage, and protection for District-purchased materials, systems, and equipment, which are a part of the Project, until such items are incorporated into the Project. Construction Manager shall coordinate with or assign these activities to the appropriate Trade Contractor who is responsible for the installation of such materials, systems, and equipment.

1.2.7. Analysis of Labor. Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.

1.2.8. Post-Bid Interviews. Construction Manager shall conduct post-bid interviews with the apparent low and second low bidders in any event that a bid appears to incomplete, fails to address the full scope of the bid package, is materially nonresponsive, if the bidder appears to be nonresponsive, and/or the bid price appears inadequate. Construction Manager shall identify any irregularities and bid protests to the District prior to the recommendation to award.

1.2.9. Post-Bid Value Engineering. Construction Manager shall evaluate the contract documents with the apparent low and second low bidders for each Trade Contract to make recommendations to the District and Architect for value engineering consideration.

1.2.10. Post-Bid Contract Document Submittals. Construction Manager shall coordinate the submission of all of its own and Trade Contractor's post-bid contract document submittals,

including but not limited to: payment bond, performance bond, local contact for surety, insurance certificates, name of superintendent/foreman, emergency contact names and phone numbers, name of safety supervisor, copy of safety manual, name of person authorized to sign documents, time and material (T&M) rates, list of Trade Contractors and suppliers, matrix of all required submittals, labor compliance forms, schedule of values, workers compensation affidavit, and affidavit of public works compliance. The Construction Manager shall ensure that all of the post-bid contract document submittals have been received, approved, and found to be in good standing prior to forwarding them to the District, and prior to the start of construction.

### 1.3. CONSTRUCTION SERVICES PHASE.

District has identified that the work may be reported in more than one (1) phase, conditioned upon receipt of funding for each phase. Services to be provided during the Construction phase for the Project include, but are not limited to, coordination of all activities that are included in the construction of the Project. Construction Manager shall be responsible for coordinating the work for the entire Project pursuant to the accepted Master Construction Schedule. As required in this Section, Construction Manager shall maintain communication with District and its consultants throughout the Construction Phase and shall provide responsible reporting and documentation prior to the contractors' Pre-Construction Conference (Section 1.3.1) and shall be responsible for coordinating the site construction services provisions (General Conditions items) including full-time supervision and administration of the Project, conducting coordination meetings, providing progress reports, processing contractors requests for information (RFI's), reviewing and recommending with the District, its consultants, and Architect the approval or disapproval of change orders and progress payments to the Trade Contractors, and maintaining record keeping to assist District in negotiations, mediation, litigation, or arbitration of claims or disputes. Additionally, the Construction Manager shall provide responsible evaluation, documentation, recommendations, and supervision of the following services: coordination of technical inspection and testing; construction observation; reporting of non-conforming Work; make recommendations to District regarding exercising Contract prerogatives; safety program implementation; endorsements of insurance and performance/payment bonds review; monitor project costs and review of schedule of values; construction progress review; maintain on-site Project record documents; processing of payments and development of the schedule of values; evaluate changes in the work; construction and scope interface contingencies management; provide change order reports; trade contractor claims review; administer storm water pollution prevention plan; submission of operation and maintenance manuals, guarantees, and releases; completion of Trade Contracts and Project; coordinate staff training, assist with move-in activities, commissioning (where stated in Contract Documents), initial start-up, and testing; and coordinate the final completion, close-out documents, and project report for the Project.

1.3.1. Pre-Construction Conference(s). Construction Manager will conduct, in conjunction with District, its consultants, and the Architect, pre-construction orientation conference(s) for the benefit of the successful bidding Trade Contractors and will serve to orient the Trade Contractors to the schedule, supervision, contract administration, safety, and various reporting procedures and site rules prior to the commencement of actual construction.

1.3.2. Contract Administration. Construction Manager, in cooperation with the District, its consultants, and Architect, will administer the Trade Contracts as set forth herein and as

provided in the General Conditions of the Trade Contracts for construction. Construction Manager shall assist the District, its consultants, and the Architect with Construction Administration (“CA”) activities and document control for the Project. Construction Manager shall set up and maintain a computerized CA database to track CA related functions, which is subject to acceptance by the District, its consultants, and Architect, which will not be unreasonably withheld. Construction Manager shall coordinate the preparation of the construction staging areas on-site for the Project and shall coordinate the preparation of the site for construction, including but not limited to, temporary fencing, all temporary utilities, job trailers, storage bins, barricades, or other items reasonably necessary for efficient construction. Construction Manager shall coordinate the mobilization of all Trade Contractors and shall coordinate construction sequencing.

In addition, Construction Manager shall provide management and related services as required to coordinate work of the Trade Contractors with each other and the activities and responsibilities of the Architect, District, and its consultants in order to complete the Project in accordance with the Construction Documents and this Agreement. Construction Manager shall provide sufficient organization of qualified and experienced personnel and management to carry out the requirements of this Agreement. Construction Manager shall maintain competent full-time staff at all times, with supervisory responsibilities for the Project site for the purpose of coordinating and providing direction for the work and progress of the Trade Contractors.

1.3.3. Submission Procedures. Construction Manager shall establish and implement submission procedures with the District, its consultants, and the Architect. Construction Manager shall establish a submittal priority matrix, provide a preliminary review of all submittals, coordinate and review shop drawing submissions, and provide coordination and submission of requests for information (RFIs), samples, mock-ups, product data, change orders, payment requests, material delivery dates, and other procedures, and maintain logs, files, and other necessary documentation. Construction Manager shall coordinate the dissemination of any information regarding the submissions.

1.3.4. Coordination Meetings. Construction Manager shall coordinate and conduct preconstruction, construction coordination, safety, and weekly job-site progress meetings with the Trade Contractors, and shall publish and distribute meeting minutes to all attendees, District, its consultants, Architect, and all other appropriate parties. Construction Manager shall attend weekly progress meetings with the District, its consultants and the Architect. Construction Manager shall assist in the resolution of any technical construction issues, and coordinate with District and District’s consultants to address issues raised by local and state agencies, and endeavor to ensure compliance with the laws, rules, and regulations applicable to the Project.

1.3.5. Coordination of Technical Inspection and Testing. Construction Manager shall coordinate with the District’s Division of the State Architect (DSA) certified project inspector, all ongoing inspection and special testing and inspection required by the Architect, Contract Documents, agencies, or other third parties. If requested, Construction Manager shall assist District in selecting any special consultants or testing laboratories. All inspection reports provided to the District will be provided to the Construction Manager on a regular basis. Construction Manager shall analyze the special testing and inspection reports and advise the District of the results and provide appropriate recommendations when there are any deficiencies noted.

1.3.6. Construction Observation. Construction Manager will assist District's inspector in observing that the materials and equipment being incorporated into the work are handled, stored, and installed properly and adequately and are in compliance with the Contract Documents for the Project. Construction Manager shall report to District regarding the status of such activity. Construction Manager shall endeavor to guard against defects and deficiencies and shall advise District of any deviations, defects, or deficiencies Construction Manager observes in the work. The Construction Manager's observation duties shall include reasonable diligence to discover work that is not in compliance with the contract documents. These observations shall not, however, cause Construction Manager to be responsible for those duties and responsibilities, which belong to District's project inspector.

1.3.7. Non-Conforming Work. Construction Manager will, in conjunction with District's project inspector, review Trade Contractor's recommendations for corrective action and make appropriate recommendations on observed non-conforming work. Construction Manager will make recommendations to District, its consultants, the Architect, and District's project inspector in instances where Construction Manager observes work that, in its opinion, is defective or not in conformity with the Contract Documents. Construction Manager shall assist District's project inspector in observing the Trade Contractor work to verify that all authorized corrections and/or changes are properly incorporated into the Project. Construction Manager shall report to District regarding the status of such activity and provide a written record of the same.

1.3.8. [This Section is intentionally left blank.]

1.3.9. Master Construction Schedule. Construction Manager shall develop and implement a Critical Path Method (CPM) Master Construction Schedule based upon the milestones established in the District's preliminary project schedule and preliminary Master Construction Schedule, and input received from the Trade Contractors. Construction Manager shall maintain and update the Master Construction Schedule on a monthly basis for acceptance by the District, and if necessary to maintain timely progress of the work according to the Master Construction Schedule, prepare bi-weekly short interval schedules, and distribute all schedules to the District, its Inspector of Record ("Inspector"), Architect, and other appropriate parties.

1.3.10. Safety Program Implementation. To the extent required by the Occupational Safety & Health Administration ("OSHA") or any other public agency, Construction Manager shall develop and implement the Project's safety program for all personnel on the project site, and monitor the implementation along with the coordination of all required and necessary safety meetings. Construction Manager shall be the controlling employer on the Project, and will ensure that all such safety programs are submitted to District. Copies of all safety meeting notes or minutes, attendees, and reports shall be forwarded to the District.

1.3.11. Bonds and Endorsements of Insurance. Construction Manager shall require all of the following in the Trade Bid Packages:

- (a) Bid bond, cash, cashier's check or certified check for 10% of the total amount of the bid, including additive alternates;
- (b) Dual-Obligee Performance bond at 100% of the contract amount in which

District and Construction Manager are named as dual obligees;

- (c) Dual-Obligee Payment bond at 100% of the contract amount in which District and Construction Manager are named as dual obligees;
- (d) All bonds and insurance must be provided by a California admitted surety; and
- (e) Insurance in the amounts and coverages as directed by District prior to bid.

Construction Manager shall receive, review, and comment on the Endorsements of Insurance, and Performance and Payment Bonds from the Trade Contractors when required and forward them to District with a copy to the Architect prior to commencement of any work by such Trade Contractors.

1.3.12. Monitoring Project Costs and Review of Schedule of Values. Construction Manager shall provide regular monitoring of the Project Budget, showing actual costs for activities in progress and estimates for uncompleted tasks for each phase of the Project. Construction Manager shall identify variances between actual and budgeted or estimated costs and advise District and the Architect whenever the actual costs for activities in progress and estimates for uncompleted tasks exceed the Project Budget and/or the Guaranteed Maximum Price as defined under Article 3. Construction Manager shall review and approve each Trade Contractor's schedule of values for each of the activities included in that Trade Contractor's schedule of values prior to submission of each month's payment application to the District.

1.3.13. Construction Progress Review. Construction Manager shall keep a daily log containing a record of weather, the Trade Contractors working on the site, number of workers, work accomplished, equipment on site, visitors to the site, problems encountered, resolutions to past problems noted, and other relevant data or such additional data as District may require. Construction Manager shall distribute copies of the log(s) to the District on a monthly basis. Construction Manager shall prepare and distribute the construction schedule updates to the Master Construction Schedule on a monthly basis for comparison, and Construction Manager shall incorporate the updates into and maintain the District's master project schedule. After an evaluation of the actual progress as observed by Construction Manager, scheduled activities will be assigned percentage-complete values. The report will reflect actual progress as compared to scheduled progress (baseline), and will note any variances. Construction Manager shall identify problems encountered in accomplishing the work and recommend appropriate action to District to resolve these problems with a minimum effect on the timely completion of the Project. Construction Manager shall develop and impose an appropriate recovery schedule on the Trade Contractor(s), which is acceptable to the District. The recovery schedule will reflect the corrective action costs (if any) and efforts to be undertaken by the Trade Contractor(s) to recapture lost time. This recovery schedule will be distributed to the Trade Contractor(s), District, its consultants, Architect, and other appropriate parties.

1.3.14. Maintain On-Site Project Record Documents. Construction Manager shall implement and maintain a comprehensive project records document management program. Construction Manager shall maintain at the Project site, on a current basis: a record copy of all

Trade Contracts, drawings, specifications, addenda, change orders, and other modifications, in good order, and Plans and Specifications marked to record all changes (as-builts) made during construction on a monthly basis; shop drawings; product data; manufacturers installation instructions; operation and maintenance manuals; warranties; samples; submissions; purchases; materials; equipment; applicable handbooks (when needed); Title 24 of the California Code of Regulations; The California Uniform Building Code; other related documents and revisions which arise out of the Trade Contracts. In addition, Construction Manager shall maintain records in duplicate, of concrete pours, principal building layout lines, elevations for the bottom of footings, floor elevation levels, and key site elevations and benchmarks certified by a qualified surveyor or professional engineer, if necessary. The Construction Manager shall make available all project and progress record documents to the District for review on a monthly basis. At the completion of the Project, Construction Manager shall deliver all such records to the Architect, so the Architect may complete the record of as-built drawings.

1.3.15. Processing of Payments and Schedule of Values. Construction Manager shall develop the schedule of values for the Project and implement procedures for the review, reconciliation, and processing of payment applications for progress and final payments. Construction Manager shall review and prepare the master monthly payment application based on percentages of work completed by the trades and the Construction Manager's compensation. Upon approval by the District, Architect, and project inspector, it will be forwarded to the District for processing.

1.3.16. Evaluate Changes in the Work. Construction Manager shall assist the District and its consultants with reviewing potential changes in the work, establish and implement a change order processing system that provides for the review and analysis of potential changes in Project scope, and make recommendations to the District regarding any changes in Contract Sum and/or Contract Time. Construction Manager shall secure authorization from the District on all proposed changes prior to Construction Manager directing the Trade Contractors to begin the work. Construction Manager shall coordinate the processing of all change orders with the Architect, DSA, and the District's Governing Board.

1.3.17. Construction and Scope Interface Contingencies. Within the Construction Manager's Guaranteed Maximum Price ("GMP") the District shall maintain and control the Project's Construction Contingency and the Construction Manager shall maintain the Scope Interface Contingency, separately. Any proposed expenditure of Scope Interface Contingency funds by Construction Manager is subject to District's prior approval and written authorization, which authorization shall not be unreasonably withheld or delayed. If District fails to respond to Construction Manager's request for authorization within five business days, having received all necessary and reasonably related information to evaluate the request, Construction Manager may authorize the proposed expenditure from the Scope Interface Contingency fund. Construction Manager's decision and the associated expenditure shall be subject to audit and dispute by the District, and any expenditure attributable to Construction Manager's sole negligence, error, or omission shall be recoverable by District from Construction Manager, in which case District may withhold such amount from any outstanding funds due Construction Manager.

The Construction Contingency can be used for construction-related changes, subject to prior District authorization. Proposed change orders ("PCO") for use of Construction Contingency funds shall be classified and tracked in one or more of the following categories:

unforeseen site conditions or cost increases arising from omissions remaining in the Contract Documents or other errors in the constructability review services provided by Barnhart under the Preconstruction Services Agreement dated May 7, 2010.

The Scope Interface Contingency can only be used for scope(s) of work required to complete the Project shown in the Contract Documents, but left undefined between the Bid Package descriptions. The undefined scope shall be quantified, priced, and presented to the District for approval before awarding the work to a trade. Conversely, if scope(s) of work required to complete the Project shown in the Contract Documents have been shown in two or more Bid Package descriptions, a deductive change order shall be written that represents the amount of work “doubled up,” which shall be placed back into the Scope Interface Contingency account.

At the conclusion of the Project, all unused portions of the Construction and Scope Interface Contingencies shall be returned to the District via deductive change order.

1.3.18. Change Order Reports. Construction Manager shall not issue instructions to Trade Contractors for changes in the work which are contrary to the District and Architect. Any such communication between the Construction Manager and the Trade Contractors shall not in any way be construed as binding on District. Construction Manager shall prepare and distribute change order reports on a monthly basis throughout the Construction Services Phase. This report will provide information pertaining to proposed and executed change orders and their effect on the GMP and master construction schedule as of the date of the report.

1.3.19. Trade Contractor Claims. Construction Manager shall be given copies of all notices of claims made by Trade Contractors for any alleged cause. All claims submitted by Trade Contractors to the Construction Manager shall be accompanied by a claim certification, pursuant to the California False Claims Act, Government Code sections 12650, et seq. Construction Manager acknowledges that it has read and is familiar with the provisions of the False Claims Act (Gov. Code sections 12650, et seq.). Submission by Construction Manager of any claim (as the term “claim” is defined in False Claims Act) to the District in connection with the Project, whether on its behalf or on behalf of a Trade Contractor or material supplier, shall constitute a representation by Construction Manager to the District that submission of the claim does not, in any respect, violate the False Claims Act. Any party with an interest in the claim, including the Construction Manager, Trade Contractor, and any material supplier, shall certify under penalty of perjury the validity and accuracy of any claim submitted to the District. Compliance with this claims certification requirement shall be a condition precedent to any obligation District might otherwise have to review the claim, and failure to provide such certification shall constitute a waiver of the claim. Excepting those claims for which Construction Manager is responsible, Construction Manager’s obligations pursuant to this section shall cease upon completion of the Project as defined in Section 1.1.2 of this Agreement. Excepting those claims for which Construction Manager is responsible, the services to be provided pursuant to this Section do not include the providing of outside consultants or outside claims analysis.

1.3.20. Storm Water Pollution Prevention Plan. Construction Manager shall ensure that a storm water pollution prevention plan is initiated, maintained, and enforced in accordance with all regulations, local ordinances, and agencies, throughout duration of the Project.

1.3.21. Operation and Maintenance Manuals, Guarantees, and Releases. Construction Manager will obtain all materials such as manufacturer's installation instructions, and operation and maintenance manuals, warranties, affidavits, releases, bonds, waivers, and guarantees for each Trade Contractor's work, materials, and equipment. All such materials shall be professionally bound, and extra stock, keys, and commissioning documents (where required) shall be submitted to appropriate District personnel. The Construction Manager is responsible for all guarantees for the minimum base one (1) year guarantee period. The material and equipment guarantees extended beyond the minimum base guarantee period shall be the responsibility of the District to manage.

1.3.22. Completion of Trade Contracts and Project. When Construction Manager considers each Trade Contractor's work or a designated portion thereof complete, Construction Manager shall prepare for the Trade Contractor a list of incomplete or unsatisfactory items (the Pre-Punch List) and a schedule for their completion.

Construction Manager shall coordinate the correction and completion of the punch list work. Construction Manager shall assist the Architect in conducting inspections and punch list development, and shall assist the Architect in determining when the Project or a designated portion thereof is complete. Construction Manager shall prepare a summary of the status of the punch list work of each Trade Contractor, listing signed-off items in the previously-issued punch list and recommending the times within which Trade Contractors shall complete the uncompleted items on the punch list.

1.3.23. As-Built Documents. Construction Manager shall perform coordination, supervisory, and expediting functions in connection with the Trade Contractor's obligation to provide "as-built" documents on a monthly basis. If as-built information of an acceptable quality is not provided by any of the Trade Contractors, the District may withhold payments from the master monthly payment application.

1.3.24. Staff Training, Move-in, and Commissioning. Construction Manager shall coordinate move-in activities with District personnel, and schedule staff training for all mechanical equipment and electrical systems. Construction Manager shall assist the District's Maintenance & Operations department with equipment and "system" start-up, testing, and commissioning (where required). Construction Manager will ensure that the Trade Contractors provide the requisite start-up, training, and commissioning (where required), as required in the Contract Documents.

1.3.25. Recommendations to District. Construction Manager shall endeavor to achieve satisfactory performance from each Trade Contractor. Construction Manager shall recommend courses of action to District when requirements of the Contract Documents or a Trade Contract are not being fulfilled, and when the non-performing party will not take satisfactory corrective action. After assignment of a Trade Contract by District to Construction Manager, the Trade Contractor's performance is Construction Manager's responsibility.

1.3.26. Accounting Records. Construction Manager shall establish and administer the Project accounting system in conjunction with District and shall maintain cost accounting records on authorized work performed under unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.

1.3.27. Permits. Construction Manager shall assist the Architect and District in obtaining all necessary local agency utility and encroachment permits for the Project, the responsibility for securing the permits resting on District and its Architect notwithstanding. This task may also encompass accompanying governmental officials (Fire Marshal, DSA, Health Department, local building department and fire authority, etc.) during inspections, assisting in preparing and submitting proper documentation to the appropriate approving agencies, assisting in final testing, and fulfilling other necessary regulations.

1.3.28. Initial Start-up and Testing. With the Architect and District's maintenance personnel, Construction Manager shall coordinate and observe the Trade Contractors' check-out of utilities, operational systems, and equipment for readiness and assist in their initial start-up and testing for the Project.

1.3.29. Professional Consultants. Construction Manager shall assist District, if requested, to provide input in selecting and retaining the professional services of surveyors, special consultants, testing laboratories, and others as necessary, and coordinate their services.

1.3.30. Final Completion, Closeout Documents, and Project Report. Construction Manager, in conjunction with the District, its consultants, Architect, and project inspector, will at the conclusion of all corrective action of punch list items, make a final comprehensive review of the Project, make a report to District which will indicate whether Construction Manager and the Architect find the work performed acceptable under the Contract Documents and the relevant Project data, and make recommendations as to final payment to the Trade Contractor(s) and the notice of completion for the Project. Construction Manager shall also process and forward all final verified reports and required Project closeout documents to the Architect for submission to DSA. At the conclusion of the Project, Construction Manager shall prepare and submit all required final Project accounting and closeout reports.

#### 1.4. TIME.

1.4.1. Construction Manager shall perform the services set forth in this Agreement as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Project.

1.4.2. Liquidated Damages. In the event the construction time requirements set forth in any Trade Contract or this contract are exceeded, the Construction Manager's fee shall be reduced by an amount of \$500 per calendar day as liquidated damages, but not as a penalty, starting from the scheduled completion date for the Trade Contract or the project, whichever is earlier, until the Trade Contract is complete or construction of the Project is substantially complete, whichever is earlier. The payment of liquidated damages shall be the remedy for damages based upon inexcusable delays.

1.4.3. Should the schedule for the Project be extended beyond the Master Construction Schedule due to delays which are not attributable to Construction Manager, including any delays arising from acts of God, force majeure, or the District, and which are beyond the contemplation or control of Construction Manager, Construction Manager's contract shall be extended and Construction Manager shall be compensated for this extension under Section 4.8 of this Agreement. Such delay will not reduce the agreed to and available contingencies.

**ARTICLE 2: THE DISTRICT'S RESPONSIBILITIES.**

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

2.2. District shall designate a representative ("District Representative") to act on District's behalf with respect to the Project. District or District Representative shall render decisions promptly to avoid unnecessary and unreasonable delay in the progress of Construction Manager's services. As District's Representative, District shall appoint the Superintendent or Superintendent's Designee.

2.3. District shall furnish tests, inspections, and reports as required by law or the contract documents.

2.4. The services, information, and reports required by Paragraphs 2.1 through 2.3, inclusive, shall be furnished at District's expense.

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

2.6. District reserves the right to perform work related to the Project with District's own forces and/or to award contracts in connection with the Project. Construction Manager shall notify District in writing within ten (10) calendar days after Construction Manager becomes aware if any such independent action will in any way compromise Construction Manager's ability to meet Construction Manager's responsibilities under this Agreement. If District's own forces cause delay, Construction Manager will be entitled to claim an adjustment in both contract time and cost.

**ARTICLE 3: GUARANTEED MAXIMUM PRICE.**

3.1. Guaranteed Maximum Price Proposal. Within twenty-one (21) calendar days, or as soon as practicable, after all of the Trade Bid Packages are competitively bid and opened pursuant to the Preconstruction Services Agreement dated May 7, 2010 and Article 1.2 of this Agreement, Construction Manager shall propose a guaranteed maximum price for the Project which shall include and list all of the costs to complete the Project according to the Contract Documents ("Guaranteed Maximum Price Proposal"). Construction Manager shall include with the Guaranteed Maximum Price Proposal a written statement of its basis, which shall include:

- (a) Confirmation that the Trade Bid Packages and the terms and conditions of the Trade Contracts used in preparation of the Guaranteed Maximum Price Proposal are based upon the Construction Documents.
- (b) A list of allowances and a statement of their basis.
- (c) A list of the clarifications and assumptions made by Construction Manager in the preparation of the Guaranteed Maximum Price Proposal to supplement the information contained in the Construction Documents.

- (d) The proposed Guaranteed Maximum Price, including a statement of the estimated Project Costs organized by trade categories, allowances, contingencies, and other items, and the Construction Manager's fee that comprise the Guaranteed Maximum Price.
- (e) The date of final completion and an updated Master Construction Schedule upon which the date of final completion is based.
- (f) The proposed basis of compensation for General Conditions.

3.2. Review of Proposal. Within five (5) calendar days of Construction Manager's submission of the Guaranteed Maximum Price Proposal, or such time period as directed by District, Construction Manager shall meet with District, its consultants, and Architect to review the Guaranteed Maximum Price Proposal and the written statement of its basis. At such meeting, District shall discuss with Construction Manager any inconsistencies or inaccuracies with respect to the Guaranteed Maximum Price Proposal or the written statement of its basis, and both parties shall endeavor to reconcile such inconsistencies or inaccuracies to the satisfaction of both parties.

3.3. Compensation Prior to Acceptance of Proposal. Except as provided for in Article 4 of this Agreement, Construction Manager shall not be entitled to any compensation or reimbursement until District accepts the Guaranteed Maximum Price Proposal.

3.4. Non-acceptance of Proposal. Unless District accepts the Guaranteed Maximum Price Proposal in writing within thirty (30) calendar days of District's receipt of the Guaranteed Maximum Price Proposal, the Guaranteed Maximum Price Proposal shall not be effective and this Agreement shall automatically terminate and Construction Manager shall not be entitled to any compensation except as provided for in Section 4.1 of this Agreement.

3.5. Acceptance of Proposal. Upon acceptance by District of the Guaranteed Maximum Price Proposal, District and Construction Manager agree to the following:

- (a) The Guaranteed Maximum Price and its basis shall be set forth as an Amendment to this Agreement.
- (b) District shall authorize and cause the Architect to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in above Amendment. Such revised Construction Documents shall be furnished to Construction Manager in accordance with schedules agreed to by District, Architect, and Construction Manager. Construction Manager shall promptly notify the Architect and District if such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.
- (c) The Project Costs are guaranteed by Construction Manager not to exceed the Guaranteed Maximum Price as adjusted by change orders in accordance with Section 3.10.3 of this Agreement. In the event that the Project Costs exceed the Guaranteed Maximum Price, as adjusted by change orders in accordance with Section 3.10.3 of this Agreement, Construction Manager shall immediately pay

such costs to whomever such costs are due without reimbursement by District. In the event that the Project Costs exceed the Guaranteed Maximum Price as adjusted by change orders in accordance with Section 3.10.3 of this Agreement and District has paid any costs in excess of the Guaranteed Maximum Price, as adjusted by change orders in accordance with Section 3.10.3 of this Agreement, Construction Manager shall reimburse District, within thirty (30) calendar days of invoice by District, for any amounts paid by District in excess of the Guaranteed Maximum Price. The GMP is for the total amount, and is not to be considered guaranteeing any individual line item. Construction Manager's obligation to reimburse District for disseminated amounts shall be determined through mediation, arbitration, or litigation.

3.6. Single Guaranteed Maximum Price Contract. A separate Guaranteed Maximum Price will not be established for each phase of the Project. The costs for each phase of the Project (upon approval of District) will be broken out separately and then included in a single Guaranteed Maximum Price contract between Construction Manager and District.

3.7. Contingency Funds. The Construction Contingency and Scope Interface Contingency Funds within the Guaranteed Maximum Price will be utilized to fund issues consistent with provisions contained in Section 1.3.17, which are not the result of Construction Manager's negligence or willful misconduct.

Contingency Funds within the Guaranteed Maximum Price may be utilized per Section 1.3.17. All funds utilized for these matters shall be specified and agreed upon by both District and Construction Manager. In the event the remaining Contingency Funds have been exhausted, Construction Manager shall bear the expense to complete the work.

3.8. Provisional Allowances within Guaranteed Maximum Price. Construction Manager will identify and prepare a list of Provisional Allowances when required. Provisional Allowances are to be established to adjust for variances due to bid environment irregularities or lack of bid coverage for specific Trade Bid Packages. If the total bids received do not exceed the Project Budget, then application of variances based on Provisional Allowances shall be at the discretion of Construction Manager unless agreed to otherwise with District. If total bids exceed the Project Budget but are less than one hundred and ten percent (110%) of the Project Budget, then adjustments shall be mutually agreed upon between Construction Manager and District. The Total of Bids received and adjustments based on Provisional Allowances shall not exceed the Guaranteed Maximum Price.

3.9. Agreed Project Budget as Basis for Guaranteed Maximum Price and Provisional Adjustments. The Project Budget shall be established prior to opening of bids, and finalized within ten (10) calendar days of execution of this Agreement.

3.10. Items Carried Outside of the Guaranteed Maximum Price. Subsequent Phases, Additional Work, Educational Program Changes, and Change Orders as Defined in Article 3.10.3 shall be carried outside of the Guaranteed Maximum Price.

3.10.1. [This Section is intentionally left blank.]

3.10.2. [This Section is intentionally left blank.]

3.10.3. Change Orders. Construction Manager shall not be responsible for any costs relating to any of the following types of change orders and such costs shall not be factored into the Guaranteed Maximum Price as long as such change orders are not the result of Construction Manager's negligence, error, or omission with respect to Construction Managers' duties related to the Project:

- (a) Change orders consistent with the policy of the State Allocation Board or approved and funded by the Office of Public School Construction.
- (b) Change orders initiated by District or DSA.
- (c) Change orders relating to subsurface conditions, if such condition is an unknown physical condition at the Project Site, or different materially from those identified in the Contract Documents as long as Construction Manager gives District thirty (30) days written notice from discovery of the unknown physical condition and prior to any additional work relating to the previously unknown physical condition.
- (d) Change orders relating to design errors in the Construction Documents.
- (e) Change Orders arising from State and/or local agency required changes that were unknown or unforeseen by the Architect.

3.10.4. [This Section is intentionally left blank.]

**ARTICLE 4: BASIS OF COMPENSATION AND PAYMENT.**

District shall compensate Construction Manager for the services required hereunder, as follows:

4.1. [This Section is intentionally left blank.]

4.2. Construction Management Services. Construction Manager shall be compensated Construction Management Services rendered during the Construction Services Phase on a fixed fee ("Professional Services Fee") basis. The Professional Services Fee shall be a fixed percentage of the sum total of the Trade Contracts as of the date they have all been awarded, to be established in the Guaranteed Maximum Price Proposal, subject to acceptance by District. The Professional Services Fee shall be the sole and exclusive compensation to the Construction Manager for its Construction Management Services, all other payments and compensation being solely and exclusively: to offset Construction Manager's costs and expenses; comprising additional Professional Services Fees related to specific increased costs of construction comprising use of Contingency Fees, in accordance with Section 4.5, below; or, comprising Additional Compensation, in accordance with Section 4.8, below. The Professional Services Fee shall be paid according to the following procedure:

4.2.1. Payment – Professional Services Fee. District shall pay Construction Manager undisputed amounts within thirty (30) days of the receipt of the invoice from the Construction

Manager for its Construction Management Services performed during the Construction Services Phase. Invoices shall be submitted on a verified percentage-to-completion basis, requesting a corresponding percentage of the sum total of the Professional Services Fee..

4.3. General Conditions. General Conditions of the Project are those generic support activities which must be in place to support all construction aspects of the Project. The method of compensation for General Conditions shall be set forth in the Guaranteed Maximum Price Proposal, pursuant to Section 3.1(f), above.

4.3.1. Payment – General Conditions. District shall pay Construction Manager undisputed amounts, without retention, within thirty (30) days of the receipt of the invoice from the Construction Manager, based upon the method of compensation for General Conditions set forth in any Guaranteed Maximum Price Proposal accepted by the District, if any.

4.3.2. General Conditions Expense Budget.

Reimbursable Expense Budget

Temporary Facilities

- Office Rental \$
- Move In/Out \$
- Dumpsters \$
- Toilets \$

Office Furnishing and Supplies

- Office Furnishings \$
- Office Supplies \$
- Postage/Delivery Services \$

Telephone

- Equipment \$
- Monthly Charges \$
- Radio/Cell Phones \$

Copier and Printing

- Printing \$
- Copy Machine and Supplies \$

Computers

- Equipment, Maintenance, and Software \$

Miscellaneous General Expenses

- Photos, Signage, Safety, First Aid, BBQ's \$

Total Budget \$

4.4. Insurance. Construction Manager shall purchase and maintain insurance, which must be in place for the duration of the Project. Insurance coverage includes, but is not limited

to, comprehensive general liability, comprehensive automobile liability, excess commercial liability/umbrella, workers' compensation, builder's risk insurance. Construction Manager shall be compensated for the cost of the insurance, for which Construction Manager shall charge no markup or fee.

4.4.1. Payment – Insurance. District shall pay Construction Manager without retention within thirty (30) days of the receipt of the invoice from the Construction Manager the actual insurance costs expended within the billing period. Such invoice shall include invoices from each insurer. Invoices shall be broken down in detail and include supporting back-up documentation.

4.5. Contingency Funds. Construction Manager shall be compensated on a fixed fee basis of \_\_\_% of the cost of the work performed by Trade Contractors using Construction Contingency or Scope Interface Contingency funds. This shall become part of the Professional Services Fee. Construction Manager's compensation for such work shall also be paid exclusively from such Contingency Funds.

4.5.1. Payment – Contingency Funds. Construction Manager shall submit to the District all recommended fund transfers to the Trade Contractors as a result of changes in the work, per Section 1.3.16 and 1.3.17, which Construction Manager and District decide should be funded from the Contingency Fund as described in Section 3.7 and 3.8. District shall approve fund transfers to the Construction Manager in accordance with Section 1.3.17. The Contingency Funds are based on budgets, per Section 4.5.2. Invoices shall be broken down in detail and include supporting back-up documentation. At the conclusion of the project, all unused portions of the Contingency Funds shall be distributed as set forth in Section 1.3.17.

4.5.2. Contingency Funds Budget.

Fund	Budget
Construction Contingency	\$
Scope Interface Contingency	\$
Total Budget	\$

4.6. Trade Contracts. The Trade Contracts will be assigned to the Construction Manager by the District at or before the conclusion of the preconstruction services phase of the Project. Construction Manager shall be compensated in a lump sum amount based on the aggregate total of all Trade Contracts as of the date they have all been awarded. There shall be no fee or markup on these Trade Contracts; Construction Manager shall be compensated for its Construction Management Services through the Professional Services Fee described in Section 4.2, above.

4.6.1. Payment – Trade Contracts. District shall pay Construction Manager undisputed amounts within thirty (30) days of the receipt of the approved master monthly payment application from the Construction Manager for the Trade Contractor's work performed during each month of the Construction Services Phase, less 10% retention. With District approval, consideration for early reduction and release of retention (or portion thereof) may be granted.

4.7. Final Payment. Construction Manager shall invoice the final amount of the Construction Manager's compensation thirty-five (35) calendar days after District records the notice of completion for the Project or thirty-five (35) calendar days after completion of the Project as defined in Public Contract Code section 7107, whichever is earlier.

4.7.1. District shall make payments of undisputed amounts to Construction Manager within thirty (30) calendar days of receipt of the approved master monthly payment application from Construction Manager. With respect to Final Payment, if the Project Costs exceed the Guaranteed Maximum Price, or if it appears that the Project Costs may exceed the Guaranteed Maximum Price, District may withhold from the Final Payment the difference between the Project Costs (or the projected Project Costs) and the Guaranteed Maximum Price. Upon completion of the Project, District shall make payment of any undisputed withheld amounts as long as such amounts are within the Guaranteed Maximum Price.

If Construction Manager accepts the assignment pursuant to Article 13, District shall make the payments for each assigned contract as set forth in Section 13.2 of this Agreement.

4.8. Additional Compensation. Construction Manager shall not be entitled to additional compensation unless there are unusual and unanticipated circumstances and only when approved in writing by District, in advance of such services being provided. If Construction Manager shall claim compensation for any damage sustained by reason of the acts of District or its agents, Construction Manager shall, within ten (10) calendar days after sustaining such damage, submit written notice to District with a written statement of the damage sustained. On or before the 15th day of the month succeeding that in which such damage shall have been sustained, Construction Manager shall file with District an itemized statement of the details and amount of such damage in accordance with this Article, and unless such statement is submitted, any claims by Construction Manager shall be forfeited and invalidated and Construction Manager shall not be entitled to consideration for payment on account of any such damage. In the event additional compensation is approved, additional compensation shall be based on the actual hourly work performed within the billing period and shall be calculated using the hourly personnel rates listed in Section 4.8.1. Such additional compensation shall not be subject to additional Construction Manager's fees or markups. Invoices shall be broken down in detail and include appropriate supporting back-up documentation.

4.8.1. Hourly Rates for Additional Compensation.

Personnel (position)

Project Executive	\$
Purchasing Manager	\$
General Superintendent	\$
Project Manager	\$
Field Superintendent	\$
Estimating/Purchasing	\$
Project Engineer	\$
Purchasing Administration	\$
Administrative Assistant	\$

**ARTICLE 5: This Article is intentionally left blank.**

**ARTICLE 6: TERMINATION, ABANDONMENT, OR SUSPENSION OF WORK.**

6.1. Termination of Construction Manager Services. District may give fourteen (14) calendar days' written notice to Construction Manager of District's intent to suspend or terminate Construction Manager's services under this Agreement for failure to satisfactorily perform or provide prompt, efficient, or thorough service, or Construction Manager's failure to complete its services or otherwise comply with the terms of this Agreement. If Construction Manager does not commence cure of said defaults, and continue diligent efforts to cure such defaults until resolved, within the above-described notice period, the District may terminate this Agreement.

District shall also have the right in its absolute discretion to terminate this Agreement without cause following twenty-one (21) calendar days' prior written notice from District to Construction Manager.

6.2. Continuance of Work. In the event of a dispute between the parties as to performance of the work or the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, Construction Manager shall proceed diligently with the performance of all the work. If the dispute is not resolved, Construction Manager or District shall submit such controversy to determination by a court having competent jurisdiction over the dispute after completion of the Project and not before.

6.3. Abandonment of Project. District has the absolute discretion to suspend or abandon all or any portion of the work on the Project and may do so upon fourteen (14) calendar days' written notice to Construction Manager. Upon notice of suspension or abandonment, Construction Manager shall immediately discontinue any further action on the Project or designated portion thereof. 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.

6.4. Compensation in the Event of Termination, Abandonment, or Suspension. In the event District terminates, abandons, or suspends the work on the Project for cause, there shall be due and payable within thirty (30) calendar days following such termination, abandonment, or suspension, or submission of Construction Manager's approved pay application, a sum of money sufficient to increase the total amount paid to Construction Manager to an amount which bears the same proportion to the total fee as the amount of services performed or provided by Construction Manager prior to the time of such termination, suspension, or abandonment of this Agreement.

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

In the event that District chooses to abandon the Project or terminate the Agreement for convenience, Construction Manager shall be reimbursed for reasonable termination costs through the payment of: (1) five percent (5%) of the Construction Manager's Fee earned to date if less than seventy-five percent (75%) of the Construction Manager's Fee have been paid; or (2) three percent (3%) of the remaining Construction Manager's Fee if more than seventy-five percent (75%) of the Construction Manager's Fee has been paid. This payment is agreed to compensate Construction Manager for any damages resulting from early termination and is consideration for entry into this termination for convenience clause.

6.5. Delivery of Documents. Upon termination, abandonment, or suspension, Construction Manager shall deliver to District all documents and matters related to the Project within ten (10) calendar days.

**ARTICLE 7: INDEMNIFICATION.**

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

- (a) Any and all claims under workers' compensation acts and other employee benefit acts with respect to Construction Manager's employees or Construction Manager's subcontractors' employees arising out of Construction Manager's work under this Agreement.
- (b) Liability for damages for (1) death or bodily injury to person; (2) injury to or loss or theft of property; (3) any failure or alleged failure to comply with any provision of law; or (4) any other loss, damage, or expense arising under either (1), (2), or (3) above, sustained by the 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 sole or active negligence, or willful misconduct of the District, its officers, employees, agents, or independent contractor's who are directly employed by the District.
- (c) Any loss or injury to or death of persons or damage to property caused by any act, neglect, default, or omission of the Construction Manager, or any person, firm, or corporation employed by the Construction Manager, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm, or corporation including the District, arising out of, or in any way connected with the Project, including injury or damage either on or off District property; but not for any loss, injury, death, or damages caused by sole or active negligence or willful misconduct of the District.

The Construction Manager at Construction Manger'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 officers, agents (excluding the Inspector, Architect or other design professionals), or employees, on any such claim or liability referenced in paragraphs (a), (b) and (c) above, and shall pay or satisfy any judgment that may be rendered against the District, its officers, agents, or employees in any action, suit, or other proceedings as a result thereof.

**ARTICLE 8: 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 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 District, which consent may be withheld in District's absolute discretion. Any attempted assignment without such consent shall be invalid.

**ARTICLE 9: APPLICABLE LAW.**

This Agreement shall be governed by the laws of the State of California, and in the event that District receives any state funding for the Project from the SAB, this Agreement shall also be governed by any applicable laws and/or regulations relating to such state funding from the SAB ("Applicable Law"). To the extent that there is any inconsistency between this Agreement and the Applicable Law, or if 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 and be deemed incorporated herein as if set forth in full.

**ARTICLE 10: CONSTRUCTION MANAGER NOT OFFICER OR EMPLOYEE OF DISTRICT.**

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

**ARTICLE 11: INSURANCE.**

11.1. Construction Manager shall purchase and maintain insurance for comprehensive general liability, comprehensive automobile liability, excess commercial liability/umbrella, workers' compensation, occupational disease, employers liability, and builders risk insurances that will protect the Construction Manager in the following amounts for the claims set forth below which may arise out of or result from Construction Manager's operations under this Agreement whether such operation be by itself, any contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

11.1.1. Comprehensive General Liability, Comprehensive Automobile Liability, and Excess Commercial Liability/Umbrella. Such policy shall cover claims for damages because of injury to persons (including but not limited to, claims for damages because of bodily injury, sickness, disease, or death), or destruction to property (including loss therefrom) from claims arising out of Construction Manager's performance of this Agreement or otherwise caused by the negligent or intentional acts or omissions of Construction Manager, Trade Contractors, or of any officer, director, stockholder, employee, consultant to or partner to Construction Manager, and shall include coverage for Contractual and Assumed Liability and Owned, Hired, and Non-owned Automobile Insurance.

The Construction Manager's comprehensive general and automobile liability insurance policies shall be written for not less than the following limits of liability:

Comprehensive General Liability

Personal Injury:	Property Damage:
\$1,000,000 Each Occurrence	\$1,000,000 Each Occurrence
\$2,000,000 Aggregate	\$2,000,000 Aggregate

Comprehensive Automobile Liability

Bodily Injury:	Property Damage:
\$1,000,000 Each Person	\$1,000,000 Each Occurrence
\$1,000,000 Each Occurrence	

Excess Commercial Liability/Umbrella

\$4,000,000 (over the underlying \$1,000,000 policy amounts)

11.1.2. Workers' Compensation, Occupational Disease, and Employers Liability Insurance. Construction Manager shall obtain such policies, which shall be in accordance with the provisions of the California Labor Code, adequate to protect all persons contracted or employed by Construction Manager from claims under Workers' Compensation Acts which may arise from the performance of services under this Agreement, whether such performance of services are by Construction Manager or anyone directly or indirectly contracted or employed by Construction Manager. The Construction Manager's workers' compensation, occupational disease, and employer's liability insurance policies shall be written for limits not less than \$1,000,000 covering all workplaces involved in the Contract Documents.

11.1.3. Builders Risk Insurance. Such policy shall protect from loss or damage to work in the course of construction. This insurance will not cover Construction Manager's or Trade Contractor tools, machinery, supplies, personal property, equipment, or materials stored on site, but not yet incorporated into the Project, all of which shall remain the responsibility of the Construction Manager and Trade Contractors to protect and insure. This insurance shall be in the form of "builder's all-risk," "all-risk installation floater," or the equivalent (excluding coverage for earthquake and/or flood). The builders' risk insurance premium will be a cost of work item, per Articles 3 and 4 of this Agreement.

11.2. [This section intentionally omitted].

11.3. The foregoing policies shall contain a provision that coverages afforded under the policies will not be reduced in coverage, canceled, or not renewed until at least thirty (30) calendar days prior written notice has been given to District. All Certificates of Insurance and endorsements showing such coverages to be in force shall be filed with District prior to commencement of the work. Such certificates and endorsements (excluding those certificates and endorsements for worker's compensation insurance) shall name District, its Board of Trustees, employees, consultants, and agents (excluding the Inspector, Architect or other design professionals) as additional insureds.

**ARTICLE 12: EXTENT OF AGREEMENT.**

12.1. This Agreement represents the entire and integrated agreement between District and Construction Manager and supersedes all prior negotiations, representations, or agreements, either written or oral, except as otherwise expressly set forth herein. This Agreement may be amended only by written instrument signed by both District and Construction Manager.

**ARTICLE 13: ASSIGNMENT OF TRADE CONTRACTS.**

13.1. Notification of Assignment. District hereby assigns to Construction Manager all of its rights and duties with respect to each Trade Contract awarded pursuant to Section 1.2.1 effective upon execution of an assignment agreement by Construction Manager, District, the applicable Trade Contractor, and such Trade Contractor's surety ("Assignment Agreement"). The language of the Assignment Agreement shall be attached hereto. This Agreement shall prevail over the Assignment Agreement to the extent that there are any inconsistencies.

13.2. Consideration. In consideration for each assignment which is effective as set forth herein, District agrees to pay Construction Manager the bid amount for the Trade Contract relating to such assignment. District's payments to Construction Manager of such consideration shall be processed in the same manner as the payment procedures set forth in the Trade Contracts and District shall make payments to Construction Manager within (30) calendar days of the receipt of the appropriate approved invoice from Construction Manager. However, in the event that the Project Costs (inclusive of payments pursuant to this Section) exceed the Guaranteed Maximum Price, Construction Manager shall be responsible for any excess payments under the assigned Trade Contracts.

13.3. Retained Rights. Notwithstanding the above, District shall conditionally retain, effective upon the non-performance of Construction Manager of its obligations and notice by District of such non-performance, all rights under the Trade Contracts, including without limitation, the right to demand performance under such Trade Contracts, and any rights related to patent and latent defects as well as any rights related to performance bonds, payment bonds, or insurance which are required pursuant to such Trade Contracts. District shall retain the benefits that derive from the Trade Contracts (i.e., the Project).

13.4. Assignability. It is further agreed that each of the Trade Contracts shall include provisions which provide that District's rights and duties under such Trade Contracts are freely assignable to Construction Manager, and that District retains all rights specified in Section 13.3.

13.5. Statutory Requirements. Construction Manager acknowledges that the Trade Contracts are subject to statutory payment provisions with respect to public works; therefore, Construction Manager agrees to abide by such statutory payment provisions as well as any payment procedures which are set forth in the Trade Contracts.

13.6. Indemnification. After Construction Manager accepts the Assignments provided for herein, Construction Manager agrees to indemnify, defend, and hold harmless District, its officers, agents (excluding the Inspector, Architect or other design professionals), and employees from and against any and all claims, liabilities, causes of action, damages, and expenses of any kind, arising out of or related to any payments to Contractors under any of the Trade Contracts,

including without limitation, any stop notice action as long as District makes all of the payments required by District pursuant to Section 13.2 of this Agreement, excepting any funds which relate to disputed work which may be withheld according to law, or which have been encumbered by stop notices or court order. Construction Manager's agreement to indemnify herein includes all costs in defending District, including without limitation, attorneys fees, expert fees, or other expenses associated with such defense by District.

**ARTICLE 14: SEVERABILITY.**

14.1. If any part of this Agreement is determined to be illegal or unenforceable, all other parts shall remain in effect.

The parties, through their authorized representatives, have executed this Agreement on the dates indicated opposite their signatures.

OWNER: SIERRA SANDS UNIFIED SCHOOL DISTRICT

DATE: \_\_\_\_\_ By: Joanna Rummer, Superintendent

CONSTRUCTION MANAGER: BARNHART-BALFOUR BEATTY, INC.

DATE: \_\_\_\_\_ By: Eric Stenman, President