

## **PRE-CONSTRUCTION SERVICES AGREEMENT**

This PRE-CONSTRUCTION SERVICES AGREEMENT (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (“Effective Date”) by and between the Corona-Norco Unified School District, a California school district organized and existing under the laws of the State of California (“District”), and \_\_\_\_\_, [entity’s name and type of entity], duly authorized to conduct business in the State of California, holding in good standing California State Contractors Licensing Board License # \_\_\_\_\_ (“Consultant”).

**WHEREAS**, District owns the approximate ten (10) acres of real property located northeast of Fieldmaster Street and Cherry Creek Circle, Eastvale, California whereupon the Yorba Elementary School will be constructed (“School Facility”); and

**WHEREAS**, there is a need for the District to construct a new elementary school at the School Facility (“Project”); and

**WHEREAS**, the Project, includes, but is not limited to: the construction of the new Yorba Elementary School, with the capacity for approximately 1,140 area students, consisting of a one-story building with a footprint of approximately 80,000 square feet, which will include classrooms, a multi-purpose room, a library, administration offices, and other associated buildings, parking lots, a playfield, and landscaping, and all other work in connection therewith; and

**WHEREAS**, District has determined that it is in its best interest to pursue the Project through the lease-leaseback project delivery method pursuant to California Education Code section 17406 which permits the Governing Board of District, without advertising for bids, to lease to an entity property owned by District if the instrument by which property is leased requires the lessee to construct, or provide for the construction, on the leased premises, of a facility for the use of District during the term of the lease, and provides that title to that building shall vest in District at the expiration of the lease; and

**WHEREAS**, the lease-leaseback method to be utilized for the construction of the Project will be documented through a Site Lease, Sublease Agreement, and Construction Services Agreement (collectively herein “Lease-Leaseback Agreements”); and

**WHEREAS**, District has retained PJHM Architects, Inc. (“Architect”) to prepare plans and specifications for the Project (“Plans and Specifications”); and

**WHEREAS**, Education Code section 17402 states that District must have adopted the Plans and Specifications for the Project after approval of those documents by the Division of the State Architect (“DSA”), which must occur prior to entering into the Lease-Leaseback Agreements; and

**WHEREAS,** District has conducted an Request For Qualifications and Request for Proposals process by which it selected Consultant to provide consulting services as specified herein; and

**WHEREAS,** Consultant desires to provide consulting services to District by reviewing the Plans and Specifications to identify and call out deficiencies and inconsistencies that will affect constructability of the Project, including, but not limited to, design and specification omissions, incomplete and/or inconsistent plans, details and specifications, and any lack of coordination, together with all other appropriate and required pre-construction services in preparation for development and construction of the Project (“Pre-construction Services”); and

**WHEREAS,** Consultant represents to District that it has the experience and expertise in construction, consulting, management and supervision to perform all Pre-construction Services to the highest standard and that it shall exercise best efforts, skill and judgment in furthering the interests of District in the performance of the services as more fully set forth herein; and

**WHEREAS,** Consultant and District acknowledge that District anticipates negotiating and entering into the Lease-Leaseback Agreements as described above; however, District and Consultant further acknowledge that District may opt not to enter into the Lease-Leaseback Agreements or otherwise proceed with the Project with Consultant, whether for lack of funding or other reasons in District’s absolute discretion. Consultant acknowledges that District shall not be responsible to Consultant for any claims or damages resulting from District’s election not to enter into the Lease-Leaseback Agreements with Consultant or otherwise not proceed with the Project using Consultant’s services.

**NOW THEREFORE,** in consideration of the covenants hereinafter contained, District and Consultant agree as follows:

## **ARTICLE 1**

### **CONSULTANT’S SERVICES AND RESPONSIBILITIES**

1.1. Consultant’s services shall consist of those services performed by Consultant, Consultant’s employees and Consultant’s subconsultants as specified in Article 2 of this Agreement.

1.2. All services described in this Agreement shall be performed to the highest standard of care applicable to a licensed California building contractor engaged in the construction of public school projects involving construction services, construction management services, and all specified services described in this Agreement.

1.3. Consultant shall not be subject to the professional standard of care of a licensed architect or professional engineer, shall not bear responsibility for errors in the Plans and Specifications resulting from the professional negligence or misconduct of any licensed architect or professional engineer, and shall not perform, or be responsible

1.4. Consultant shall make a written record of all meetings, conferences, discussions and decisions made between or among District, Consultant, and District's consultants, including Architect, during all phases of the Project and concerning any material condition in the requirements, scope, performance, and/or sequence of the work for the Project.

## **ARTICLE 2**

### **SCOPE OF CONSULTANT SERVICES**

#### **2.1. Scope.**

Consultant agrees to perform the services described in this Article, which include pre-construction services based upon Plans and Specifications provided by Architect. Consultant will not perform actual design services for the Project, but will provide complete constructability review services with the intent and purpose of identifying and calling out any deficiencies and inconsistencies in Architect's Plans and Specifications that will affect constructability of the Project, including but not limited to, design and specification omissions, incomplete and/or inconsistent plans, details, and specifications, and any lack of coordination, with the ultimate goal that the DSA approved Plans and Specifications for the Project will be complete for the construction of the Project in strict accordance with the Plans and Specifications without change orders or additional charge to District. Consultant's services shall be provided in two phases as specified below.

##### **2.1.1. Phase 1**

2.1.1.1. **Design Meetings.** Consultant shall attend planning meetings with a project manager and estimator representatives to discuss Project issues with District and Architect.

2.1.1.2. **Estimate Validation.** Consultant shall review and validate cost estimates developed by Architect upon completion of the design and construction documents phases.

2.1.1.3. **Value Analysis.** Consultant shall actively evaluate the Project for value savings options and present all value saving options to District and Architect for review and consideration.

##### **2.1.2. Phase 2**

2.1.2.1. **Team Meetings.** Consultant shall attend regular team meetings with a project manager, estimating representatives, and Architect.

2.1.2.2. **Schedule.** Consultant shall establish a master critical path method ("CPM") Project schedule which includes all milestone dates including,

2.1.2.3. **Construction Cost Estimate.** Consultant shall provide cost estimates based on DSA submittal documents for all improvements comprising the Project. The cost estimates shall identify all trades and unit costs. Consultant shall also identify all allowances, contingencies, General Condition costs, and fees. If any cost estimate submitted to District exceeds previously-approved estimates for the construction budget, Consultant shall make appropriate recommendations to District for getting the Project back within budget. All estimates shall be broken down by trade and Specification section and shall include a variance report that shows the differences between the estimates at various stages.

2.1.2.4. **Value Analysis.** Consultant shall provide value analysis reviews with each estimate and throughout each bid phase indicating cost savings and schedule impact. Consultant shall assist Architect and District in considering operating and/or maintenance costs with respect to selection of systems and products for the Project to refine ideas and provide pricing feedback and verify that the accepted savings ideas are incorporated into the final Plans and Specifications as approved by DSA.

2.1.2.5. **Constructability Review.** Consultant shall provide detailed, written constructability reviews both prior to and upon completion of each proposed DSA submittal document and all related Specifications. Consultant shall review documents for errors, omissions, clarity, consistency, coordination, and overall constructability. Consultant shall provide written reports identifying, by drawing sheet, detail and specification section, and page, the issues to be discussed and resolved. As part of the constructability review, Consultant shall identify areas where value analysis principles could be applied, and identify long-lead items.

2.1.2.6. **Construction Planning.** Consultant shall provide assistance in construction planning, including, but not limited to, phasing, staging, site logistics, sequencing, fencing, office locations, means and methods, and bid package development.

2.2. **Limited Authority.** Consultant's duties, responsibilities, and limitations of authority shall not be restricted, modified, or extended without written agreement between District and Consultant.

2.3. **Schedule.** Consultant shall perform constructability reviews and estimates promptly upon receipt of the documents. The Pre-construction Services shall be completed by                     , 20      . If the pre-construction period is extended, upon prior written approval of District, Consultant will be compensated based on the hourly rates included in Exhibit “A” attached hereto and by this reference incorporated herein.

2.4. **Access.** Consultant shall have access to the Project site and the work at all times.

2.5. **Ability to Add Scope of Work.** District may add additional work to Consultant’s scope of work including, but not limited to: Procurement of materials and equipment (e.g., long lead items, furniture, and equipment, deferred approval item materials, lighting, and other equipment, etc.) and preparation or procurement of necessary shop drawings.

### **ARTICLE 3**

#### **DISTRICT’S RESPONSIBILITIES**

District shall provide Project requirements to Consultant, including information regarding District’s objectives, budget, schedule, constraints, and criteria.

### **ARTICLE 4**

#### **TERMINATION**

4.1. **Breach.** This Agreement may be terminated by either party upon fourteen (14) days written notice to the other party in the event of a substantial failure of performance by such other party, including insolvency of Consultant.

4.2. **Abandonment or Postponement.** This Agreement may be terminated by District upon fourteen (14) days’ written notice to Consultant if District decides to abandon or indefinitely postpone the Project. In the event of a termination based upon abandonment or postponement by District, District shall pay Consultant for all services performed and all expenses incurred under this Agreement supported by documentary evidence, including payroll records, and expense reports, up until the date of the abandonment or postponement, subject to the “Not To Exceed” amount payable to Consultant provided herein, plus any sums due Consultant for Board approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process of completion and to complete and incomplete documents whether delivered to District or in the possession of Consultant.

4.3. **Convenience.** This Agreement may be terminated without cause by District upon fourteen (14) days written notice to Consultant. In the event of a termination without cause, District shall pay Consultant for all services performed and all expenses incurred under this Agreement supported by documentary evidence,

4.4. In the event of a dispute between the parties as to performance of the work or the interpretation of this Agreement or payment, the parties shall attempt to resolve the dispute. Pending resolution of any dispute, Consultant agrees to continue the work diligently to completion. If the dispute is not resolved, Consultant agrees it will neither rescind the Agreement nor stop the progress of the work.

## **ARTICLE 5**

### **COMPENSATION**

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

5.1. Consultant shall be compensated for services described in Article 2 on a “Not To Exceed” or “NTE” basis in the amount of \$\_\_\_\_\_ (\_\_\_\_\_ Dollars) which amount shall be included in the Guaranteed Maximum Price for construction of the Project. District shall reimburse Consultant for the cost of necessary reproduction of documents produced by Architect, including its consultants, and other design professionals engaged by District related to the Project, subject to District’s prior written approval, up to a maximum amount of \$\_\_\_\_\_ (\_\_\_\_\_ Dollars). In every other respect, Consultant shall be responsible for all costs and expenses incurred for providing the services required by this Agreement, including costs of hiring subconsultants and other professionals, travel expenses to the Project site and meetings with District and its representatives, long distance telephone charges, copying expenses, salaries of Consultant’s staff and employees working on the Project, overhead, and any other cost and expense reasonably required of, and actually incurred by Consultant in performance of its obligations under this Agreement.

5.2. District shall pay Consultant within thirty (30) days of receipt of a proper, complete, and accurate invoice from Consultant consistent with the rates included in Exhibit “A.” Invoices shall be broken down in detail and include supporting back-up documentation prior to District’s approval and payment.

## **ARTICLE 6**

### **EMPLOYEES AND CONSULTANTS**

6.1. Consultant shall submit, for written approval by District, the names of any consultant firms proposed for the Project. Nothing in this Agreement shall create

6.2. Consultant's consultants shall be licensed to practice in California and have relevant experience with California school design and construction during the last five years. If any employee or consultant of Consultant is deemed not acceptable to District, upon District's request, that individual shall be replaced with an acceptable, competent person acceptable to District.

## **ARTICLE 7**

### **CONSULTANT AS INDEPENDENT CONTRACTOR**

Consultant is retained as an independent contractor and is not employed by District. No employee or agent of Consultant shall become an employee of District for any purpose. It is agreed that District is interested only in the results obtained from service under this Agreement and that Consultant shall perform as an independent contractor with sole control of the manner and means of performing the services required under this Agreement. Consultant shall complete this Agreement according to its own methods of work which shall be in the exclusive charge and control of Consultant and which shall not be subject to control or supervision by District except as to results of the work. It is expressly understood and agreed that Consultant and its employees shall in no event be entitled to any benefits to which District employees are entitled, including, but not limited to, overtime, retirement benefits, insurance, vacation, workers' compensation benefits, sick or injury leave or other benefits. Consultant shall be responsible for all salaries, payments, and benefits for all of its officers, agents, and employees in performing services pursuant to this Agreement.

## **ARTICLE 8**

### **INSURANCE**

Consultant shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to District which will protect Consultant and District from claims which may arise out of or result from Consultant's actions or inactions relating to this Agreement, whether such actions or inactions be by Consultant, its agents, employees, consultants or subconsultants, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts or omissions any of them may be liable. Such insurance coverage shall include the following:

8.1. Workers' Compensation Insurance in accordance with the laws of the State of California and Employers Liability Insurance in the amount of at least One Million Dollars (\$1,000,000) per accident for bodily injury and disease.

8.2. Comprehensive general and auto liability insurance with limits of not less than One Million Dollars (\$1,000,000) combined single limit, bodily injury and property damage liability per occurrence, and Two Million Dollars (\$2,000,000) in

8.3. Each policy of insurance required above shall name District and its officers, agents, and employees as additional insureds; shall state that, with respect to the operations of Consultant hereunder, such policy is primary and any insurance carried by District is excess and noncontributory with such primary insurance; and shall state that not less than thirty (30) days' written notice shall be given to District prior to cancellation. Consultant shall notify District in the event of material change in, or failure to renew, each policy. Prior to commencing work under this Agreement, Consultant shall deliver to District proof of insurance as evidence of compliance with the requirements herein. In the event Consultant fails to secure or maintain any policy of insurance required hereby, District may, at its sole discretion, secure such policy of insurance in the name of and for the account of Consultant, and in such event, Consultant shall reimburse District upon demand for the cost thereof, or District may withhold the cost of such insurance from amounts due Consultant.

## **ARTICLE 9**

### **INDEMNIFICATION**

9.1. Consultant shall indemnify, defend, and hold harmless District, its administrators, Board, and employees ("Indemnitees") from all claims, liabilities, lawsuits, costs, losses, expenses, damages or judgments arising from any negligent or intentional acts or omissions of Consultant, its agents, employees, and consultants relating to Consultant's performance of its obligations under this Agreement.

9.2. Consultant shall defend, indemnify, and hold harmless District from any claim for employment benefits, workers' compensation or other benefits, by any agent or employee of Consultant or any consultant or subconsultant.

9.3. Consultant will promptly pay any judgment rendered against Consultant and/or the Indemnitees and each of them covering such claims, damages, penalties, obligations, and liabilities arising out of or in connection with such work, operations, or activities of Consultant hereunder and Consultant agrees to save and hold harmless the Indemnitees.

9.4. In the event that any of the Indemnitees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the work, or operation or activities of Consultant hereunder, Consultant agrees to pay to said Indemnitees any and all costs and expenses incurred by the Indemnitees in such action or proceeding together with reasonable attorney's fees.

9.5. District may retain, to the extent it deems necessary, the money due to Consultant under and by virtue of the contract documents until disposition has been made of such actions or claims for damages as specified hereinabove.



## ARTICLE 10

### MISCELLANEOUS

10.1. **Notices.** Any notices or filings required to be given or made under this Agreement shall be served, given or made in writing upon District or Consultant, as the case may be, by personal delivery or registered mail (with a copy sent via fax or regular mail) to the respective addresses given below or at such other address as such party may provide in accordance with the provisions herein. Any change in the addresses noted herein shall not be binding upon the other party unless preceded by no less than thirty (30) days' prior written notice.

**If to Consultant:**

	[Name of Consultant]
	[Street Address]
	[City, State Zip Code]

Attn:

**If to District:**

Corona-Norco Unified School District  
2820 Clark Avenue  
Norco, CA 92860-1903  
Attn: Donald Lussier

10.2. **No Third Party Rights.** Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of any third party against either District or Consultant.

10.3. **Modification of Agreement.** No waiver, alteration or modification of any of the provisions of this Agreement shall be binding upon either District or Consultant unless the same shall be in writing and signed by both District and Consultant.

10.4. **Assignment.** Neither party shall assign this Agreement without the prior written consent of the other, nor shall Consultant assign any monies due or to become due to it hereunder without the prior written consent of District.

10.5. **Headings.** The headings in this Agreement are inserted only as a matter of convenience and reference and are not meant to define, limit or describe the scope or intent of the contract documents or in any way to affect the terms and provisions set forth herein.

10.6. **Applicable Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of California and both parties agree that venue for any dispute arising under this Agreement shall be in Riverside, California.



## EXHIBIT “A”

### HOURLY RATES FOR PRE-CONSTRUCTION SERVICES

Consultant will invoice District for actual costs on a monthly basis subject to the NTE amount, until the Project is approved by DSA. The following rates shall also be the basis of billing for any additional Pre-construction Services agreed to by and between the parties that expands beyond the scope of work set forth in Article 2 of the Agreement.

Classification	Rate
Principal	\$_____/hour
Senior Project Manager (Project Director)	\$_____/hour
Estimator	\$_____/hour
Project Manager	\$_____/hour
Estimator (Staff Level)	\$_____/hour
Superintendent	\$_____/hour
Project Engineer	\$_____/hour
MEP Coordinator	\$_____/hour
Project Coordinator	\$_____/hour