

AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

This Construction Management Services Agreement ("Agreement") is made and entered into this 10th day of March, 2021 ("Effective Date") by and between the NATOMAS UNIFIED SCHOOL DISTRICT ("District") and VANIR CONSTRUCTION MANAGEMENT, INC. ("Construction Manager") for construction management services. District or Construction Manager may be referred to individually as a "Party," or collectively as the "Parties."

RECITALS

- A. District is procuring construction management services for construction projects (each a "Project").
- B. District selected Construction Manager to provide construction services during the design and construction of the Project ("Construction Management Services"). The services described in Exhibit A, attached hereto and incorporated herein, shall constitute the "Work."
- C. District and Construction Manager have successfully negotiated the terms and conditions, including a Not-to-Exceed price, to apply to the Work. This fee will be adjusted as necessary to accommodate new projects beyond the current amount.
- D. The Construction Manager has demonstrated that it is competent to perform the Work described herein and desires to enter into this Agreement with the District for the completion of the Work in accordance with all applicable laws and regulations, including all applicable District Board policies, and the terms and conditions set forth in this Agreement.
- E. The Construction Manager has represented that it has the personnel and resources necessary to successfully complete the Work for the Project within the required schedule and with a budget allowance not to exceed the amount specified in this Agreement, including all fees for time and labor for salaries, overhead, materials, equipment, licenses, direct non-salary expenses incurred by the Construction Manager, including subcontractor costs.

Now, therefore, in consideration of the mutual agreements and covenants contained in this Agreement, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I INCORPORATION OF DOCUMENTS AND ORDER OF PRECEDENCE

Section 1. The foregoing Recitals are incorporated herein and made a part hereof for all purposes as if fully set forth, and constitute additional promises, representations and warranties of the Parties.

Section 2. Each and every provision of the documents listed below is incorporated into this contract by this reference. The documents referenced below are in descending order of precedence. Any conflict between or among any of the documents shall be resolved in favor of the document with higher precedence.

- (a) Amendment(s) to this Agreement, if any;
- (b) This Agreement

ARTICLE II REPRESENTATIONS AND RESPONSIBILITIES

Section 1. Construction Manager shall provide the materials, equipment, products and labor to perform professional pre-construction services, including design reviews, constructability reviews (for scheduling, clarity, consistency and coordination), cost estimating, and other related Construction Management Services for the Project, as more specifically described in Exhibit A, attached hereto and incorporated herein. Construction Manager represents that it has the capabilities and skills to complete the Construction Management Services work.

Section 2. Construction Manager represents that it has the capabilities and skills in coordination and management of multiple construction trades, bidding management and bid evaluation in compliance with all applicable laws and regulations, construction supervision, progress payment management and cost negotiations, quality control, project close-out, project scheduling, budget management and cost control, and general management and administration of construction projects. Construction Manager agrees to provide its best skill and judgment in furthering the interests of District in the management of the successful construction of the Project.

Section 3. Construction Manager has represented that it has significant experience with the management of public construction projects. Construction Manager represents it understands the oversight, management and communication that is normally required and will incorporate diligence and skill in the performance of the Work in the construction of the Project.

Section 4. All Work under this Agreement shall be performed in a technically sound manner and in accordance with prevailing professional standards applicable to the construction management Work proposed herein. In executing this Agreement and providing services hereunder, the Construction Manager agrees it will exercise the ordinary care and skill expected in the industry, and that it shall assume overall responsibility for ensuring that the Work is completed in a satisfactory manner and in compliance with all requirements of this Agreement and all applicable state and local laws and regulations, including District Board policies.

Section 5. Construction Manager is qualified to do business under the laws of the State of California, and has all requisite corporate power and corporate authority to carry on its business as now being conducted.

Section 6. Construction Manager shall at all times enforce strict discipline and good order among Construction Manager's employees and subcontractors and shall not employ any unfit person or anyone not skilled in work assigned to Construction Manager under this Agreement.

Section 7. This Project(s) is to be developed in an interactive, team-oriented, collaborative approach together with District, Construction Manager, and District Contracted Architect(s) ("Architect"). Construction Manager agrees to use best efforts to cooperate with the Architect and District and to utilize Construction Manager's professional skill, efforts and judgment in furthering the interests of District in a professional, efficient and economical manner.

Section 8. Construction Manager shall not make or participate in making or in any way attempt to use Construction Manager's position to influence a governmental decision in which Construction Manager knows or has reason to know Construction Manager has a financial interest other than the compensation promised by this Agreement. Construction Manager represents that Construction Manager has diligently conducted a search and inventory of Construction Manager's economic interests, as defined in the regulations promulgated by the California Fair Political Practices Commission, and has determined that Construction Manager does not, to the best of Construction Manager's knowledge, have an economic or organizational interest which would conflict with Construction Manager duties under this Agreement. Construction Manager agrees to scrupulously avoid performing services for any person or entity or entering into any contractual or other relationship with any person or entity which might create a conflict with the rendering of services under this Agreement. Construction Manager will immediately advise the District if Construction Manager learns of an economic or organizational conflict of interest, or other prohibited conflict of interest of Construction Manager during the term of this Agreement. No member, officer, or employee of a local public body, during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. No member of or delegate to the Congress of the United States shall be admitted to a share or part of this Agreement or to any benefit arising therefrom.

ARTICLE III BASIC SERVICES

Section 1. Construction Manager's basic services associated with the Construction Management Services consist of those services performed by Construction Manager and Construction Manager's employees and consultants to provide the core functions set out within Exhibit A.

Section 2. Any "Additional Services" performed by the Construction Manager upon request and authorization in writing from the District shall be paid for if approved in writing in advance by District.

ARTICLE IV INDEPENDENT CONTRACTOR

Construction Manager shall be an independent contractor for District and not an employee. Construction Manager understands and agrees that it and all of its employees shall not be considered officers, employees or agents of District, and are not entitled to benefits of any kind normally provided employees of District, including but not limited to, state unemployment compensation or workers' compensation. Construction Manager assumes full responsibility for the acts and omissions of its employees or agents related to the Construction Management Services/Work. Construction Manager assumes full responsibility for payment of all state and local taxes or contributions, including unemployment insurance, social security and income taxes, for employees performing Construction Management Services/Work.

**ARTICLE V
COMPENSATION AND PAYMENT**

Section 1. This is a Time and Material Contract with a Not-to-Exceed Fee.

Section 2. As compensation for the successful completion of the Construction Management Services to be performed by the Construction Manager under this Agreement, District will pay to the Construction Manager fees not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000). This amount is full and complete consideration to the Construction Manager for all the services, hours, overhead, fringe benefits, taxes, fees and other allowable direct costs incurred in connection with the Construction Management Services Work. Construction Manager shall not be entitled to compensation for more than forty (40) hours per week per individual employee.

Section 3. Construction Manager shall not be entitled to compensation beyond the amount noted in this Article V for any costs or expenses paid or incurred by Construction Manager in performing the Work unless payment for such extra work is mutually agreed to in writing by the Parties. The rates in Exhibit B may be used for determining compensation for any extra work determined to be necessary that is agreed upon in writing by the Parties.

Section 4. Work performed and expenses incurred may be eligible for reimbursement under the terms of this Agreement. The Construction Manager will invoice the District pursuant to the schedule described above and as noted herein.

(a) Construction Manager shall only be paid for Work completed. The compensation stated in Article V shall be paid in monthly installments based on progress reports submitted by the Construction Manager as described herein.

(b) In order for the District to process monthly payments to the Construction Manager, Construction Manager shall furnish monthly invoices on or about the first (1st) day of each month based on the hourly rates set forth in Exhibit B. The format of such invoice shall be mutually approved by the District and Construction Manager. Such invoices shall include a detailed and accurate progress report describing all Work performed the previous month, accurate and up to date percentages of progress toward the completion of all deliverables, and information on all payments to subcontractors made the previous month, if any. District and Construction Manager shall hold a monthly invoice meeting to discuss the progress report submitted to allow District to confirm any requested payments for Work completed. Upon certification of the completion of the Work described in the monthly invoice and any reimbursable direct costs, District shall pay the associated payment within thirty (30) calendar days after the date of receipt of an approved invoice. Invoices shall reference the Agreement number and Project title. Construction Manager shall sign and certify the invoice in the following manner:

"I hereby certify, under penalty of perjury, that the above invoice and all accompanying information is just and correct and that reimbursement for such expenses listed on this invoice has not been previously received from the District nor any other source."

(c) District shall have the right to withhold payment for any Work (or portion thereof) not performed in accordance with this Agreement or the other contract documents

incorporated into this Agreement, or for any Work not supported by appropriate documentation or other information. District shall notify the Construction Manager of any such withholding and provide the Construction Manager the opportunity to correct the Work in question, correct or supplement the invoice, as applicable, or provide a written explanation for any performance issues in the event such issues are a result of circumstances outside of the control of Construction Manager. District may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment made by District to the Construction Manager to such extent as may be necessary to protect District from loss or damage, or to compensate District for any damages caused by, resulting from or arising out of, including but not limited to, any failure to perform the Work in accordance with this Agreement. So long as District is not in default in making payment for undisputed amounts due Construction Manager, notwithstanding any claim, dispute or other disagreement between the Construction Manager and District arising out of the Project or this Agreement, pending resolution of the same in accordance with the Agreement, the Construction Manager shall continue to diligently provide and perform the Work. Payment will not be unreasonably withheld by the District.

(d) Neither payment of amounts due by District nor acceptance of any such payment by the Construction Manager shall constitute a waiver of any claim by District for errors or omission in invoices or payments.

(e) District shall have the right to subsequently correct any payment error made by withholding or subtracting amounts from future monthly payments or paying for underpayments, as appropriate.

(f) If agreed to in writing in advance by District, Construction Manager may invoice the District for reimbursable expenses at their actual cost.

ARTICLE VI DISTRICT RESPONSIBILITIES

Section 1. The District shall provide full and complete information regarding the requirements of the Project, which shall set forth the District's objectives, constraints and criteria.

Section 2. The District shall provide the budget for the Project.

Section 3. The District shall designate a representative ("District's Representative") to act on the District's behalf with respect to the Project. The authorized Representative shall render decisions promptly to avoid unreasonable delay in the progress of the Construction Manager's services and shall expeditiously process Construction Manager payment applications and change order documentation and shall make all required payments in a timely manner.

Section 4. The District shall furnish tests, inspections and reports as required by applicable law or the Project documents.

Section 5. If the District observes or otherwise becomes aware of any fault or defect in the Project, or nonconformance with the contract documents, the District shall give prompt notice thereof to the Construction Manager.

**ARTICLE VII
PROJECT SCHEDULE**

Section 1. The Parties to this Agreement understand and agree that execution of this Agreement by District is a Notice to Proceed ("NTP") for the Work of this Agreement.

Section 2. Work shall commence or continue upon execution of this Agreement by the District as referenced above. The Work shall be performed in accordance with the preliminary project schedule provided at the onset of each project. Construction Manager shall also send a detailed project schedule that includes critical path activities within 10 days of beginning work on any Project.

Section 3. This Agreement may be extended in the event the Construction Manager and District mutually agree through a written contract amendment. Such a written amendment may be used to extend the performance period of service for the Work, or to add required work to the Work set forth in Exhibit A. In the event additional work is added to the Work, the Parties may mutually agree to modify the Compensation in Article V above and payment for any such additional work shall be completed in accordance with the terms and conditions of this Agreement.

Section 4. Except as otherwise provided in this Agreement, when either Party has knowledge that an actual or potential situation will delay or threaten to delay the timely performance of the Work in accordance with the Project Schedule, and/or delay the completion of the Work by the time specified above, that Party shall give written notice thereof to the other Party within ten (10) calendar days, including all relevant information concerning the actual or potential delay, so that the Parties can meet to discuss and determine an appropriate course of action.

**ARTICLE VIII
CONTRACTOR PERSONNEL**

Section 1. District's selection of the Construction Manager for the performance of the Work was based in part upon a consideration of the qualifications and experience of Construction Manager's Project Manager and other Key Personnel. The Construction Manager shall assign personnel to the Project in accordance with the organization and staffing plan submitted with its proposal, to the extent such personnel remain employed by Construction Manager.

Section 2. The Construction Manager shall be responsible for the performance of all of the Work under this Agreement and shall utilize the professional expertise and experience of the Key Personnel as specified in this Article VIII.

Section 3. The District Project Manager, or designee, at its sole discretion, shall have the right to demand the removal by the Construction Manager of any of the Key Personnel. Any replacement of the Key Personnel due to such removal shall not be done without written approval by District.

Section 4. To the extent they remain employed by Construction Manager, the Construction Manager shall not replace or remove its Project Manager or any of the other Key Personnel during the Contract term without the prior written approval of the District Project Manager, or designee. If the Construction Manager replaces or removes any Key Personnel in violation of this Article VIII, such action shall be considered a breach of contract by District and District shall have the right to

pursue all remedies available to District under this contract, any incorporated documents and any applicable laws, regulations or District Board Policies.

Section 5. In the event the Construction Manager is unable to provide the services of, or replaces, any of the Key Personnel, the Construction Manager shall be responsible for providing other personnel for the performance of the specific items of work involved, whose expertise and experience are equivalent or higher to that which would have been provided by the originally listed personnel. The Construction Manager shall submit any such substitute Key Personnel to the District Project Manager, or designee, for its prior review and approval which shall not be unreasonably withheld. The Construction Manager shall be solely responsible for any additional costs it incurs due to the substitution of personnel or subcontractors.

Section 6. Construction Manager must obtain prior approval for adding new subcontractors or removing existing subcontractors. Construction Manager shall use the required District form to obtain approval to add new subcontractors, replace existing subcontractors and/or remove existing subcontractors. To add staff or subcontractors, an approved Personnel Request Form signed by the Contract Manager shall suffice as approval. A formal Agreement amendment shall not be required to add staff or new subcontractors.

Section 7. Any and all subcontractor agreements entered into by Construction Manager shall contain all the applicable provisions of this Agreement.

ARTICLE IX LABOR COMPLIANCE

Section 1. Construction Manager and any subcontractor shall not be qualified to bid on (subject to the requirements of Public Contract Code section 4104) or engage in the performance of any public work unless currently registered with the Department of Industrial Relations and qualified to perform public work pursuant to Labor Code section 1725 .5, except under the limited circumstances set forth in Labor Code section 1771.1 (a). The District may not accept a bid or enter into a contract for a public works project with an unregistered contractor.

Section 2. Pursuant to Labor Code section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the Department of Industrial Relations. This is a public works project and Construction Manager and any subcontractors performing work on the Project shall be required to comply with the provisions of Labor Code section 1720, and the regulations of the Department of Industrial Relations' Division of Labor Standards Enforcement (i.e., the Labor Commissioner), including, but not limited to, the standard provisions requiring payment of prevailing wages, maintenance and submission of certified payroll records, and the hiring of apprentices as appropriate. Unless otherwise specified, the Construction Manager shall be required to post job site notices regarding the requirements of this paragraph, as prescribed by regulation.

**ARTICLE X
OWNERSHIP OF DOCUMENTS**

Section 1. Construction Manager understands and agrees that all materials and work produced during the completion of the Work, including all drawings, details, reports and estimates, shall become the property of District and cannot be used without the District's express written permission Pursuant to Education Code section 17316.

Section 2. All electronic files, software, licenses, programs, equipment manuals, and databases prepared or obtained by the Construction Manager in the course of performing Work under this Contract and requested in writing by District shall be delivered to and become the property of District at the termination of this Agreement, for whatever cause. The Construction Manager and its subcontractors shall convey and transfer any copyrightable interests or licenses in such requested materials to District upon completion of all services under this Agreement and upon payment in full of all compensation due to the Construction Manager in accordance with the terms of this Agreement.

Section 3. The Construction Manager represents that it has secured all necessary licenses, consents, or approvals to use the components of any intellectual property, including computer software used in providing services under this Contract, and that District has full legal title to and the right to reproduce such materials. The Construction Manager agrees to defend, indemnify, and hold District harmless for any loss, claim, or liability in any way related to a claim that District is violating State or local law, or any contractual provisions, relating to trade names, licenses, franchises, patents, or other means of protecting interests in products or inventions used by Construction Manager in performing the Work. The Construction Manager shall bear all costs arising from the use of patented, copyrighted, trade secret, or trademarked materials, equipment, devices, or processes used on or incorporated in the services and materials produced under this Agreement. In the event any such materials, equipment, devices, or processes are held to constitute an infringement and their use is enjoined, the Construction Manager, at its sole expense, shall either (1) secure for District the right to continue using the materials by suspension of any injunction or by procuring a license or licenses for District; or (2) modify the materials so that they become non-infringing. This covenant shall survive the termination of this Agreement.

Section 4. The Construction Manager agrees that all reports, communications, electronic files, databases, documents and information that it obtains or prepares in connection with performing this Agreement shall be held in the strictest confidence and treated as confidential material and shall not be released or published without the prior written consent of District; provided, however, that the contractor may refer to this Project in connection with its promotional literature in a professional and commercially reasonable manner and in compliance with any District established marketing restrictions. The provisions of this subsection shall not apply to information in whatever form that comes into the public domain. The provisions of this paragraph also shall not restrict the Construction Manager from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency, or other entity with proper jurisdiction, or if it is reasonably necessary for the Construction Manager to defend itself from any suit or claim. In the event of any such disclosure of information by Construction Manager, Construction Manager shall provide immediate notice to District prior to the disclosure.

Section 5. The Construction Manager shall advise District of any impending patent suit and provide all information available. The Construction Manager shall defend any suit or proceeding brought

against District based on a claim that any product, or any part thereof, furnished under this Agreement, constitutes an infringement of any patent; and, the Construction Manager shall pay all damages and costs awarded therein, excluding incidental and consequential damages, against District. In case said product, or any part thereof, is in such suit held to constitute infringement and use of said product or parts is enjoined, the Construction Manager shall, at its own expense and at its option, either procure for District the right to continue using said product or part, or replace same with non-infringing product, or modify it so it becomes non-infringing. This Article X, Section 5 shall not apply in the event District mandates use of a product for which Construction Manager cannot guarantee the rights of use and such warning has been provided in writing to the District.

Section 6. Construction Manager shall maintain complete and accurate records with respect to actual hours expended each month, payment to subcontractors and allowable costs incurred under this Agreement. All such records shall be maintained on generally accepted accounting principles (GAAP) and shall be clearly identified.

Section 7. District, the State, the State Auditor, or any duly authorized government representative having jurisdiction shall have the right to examine and audit such books and records and to make transcripts or copies from them as necessary. Construction Manager shall allow inspection of all work data, documents, proceedings, and activities related to this Agreement, during the course of this Agreement, and for a period of five (5) years from the date of final payment under this Agreement. This Article must be included in any subcontract entered into as a result of this Agreement.

ARTICLE XI COMPLIANCE WITH LAWS & FINGERPRINTING

Section 1. Construction Manager agrees to comply with all state and local laws, rules, regulations and ordinances, and District policies that are now or may in the future become applicable to this Project or to Construction Manager, its employees or subcontractors engaged in Construction Management Services or accruing out of the performance of such services. District shall not be responsible for any Construction Manager costs incurred by Construction Manager as a result of such compliance, unless mutually agreed to in writing by the Parties. Construction Manager's failure to so comply shall constitute a material breach of this contract.

Section 2. Construction Manager shall comply with all provisions of the Education Code which protect the safety of any pupil that may come in contact with employees of the Consultant. Pursuant to Education Code section 45125 .1, Construction Manager shall conduct criminal background checks of all employees of Construction Manager assigned to provide services, and shall certify that no employees who have been convicted of serious or violent felonies as specified in Education Code section 45125 .1, will have contact with pupils, by utilizing a District-approved certification form. As part of such certification, Construction Manager must provide the District with a list of all employees providing services pursuant to this Agreement, and designate which sites such employees will be assigned. In performing the services set forth in this Agreement, Construction Manager shall not utilize any employees who are not included on the above referenced list. At District's sole discretion, District may make a finding, as authorized under Education Code section 45125.1, that Construction Manager's employee(s) will have only limited contact with pupils or the protections described in Education Code section 45125.2 will be in effect.

**ARTICLE XII
NECESSARY LICENSES**

During the entire performance period of this Agreement, the Construction Manager shall maintain all state and local licenses, certifications and registrations applicable to the work performed under this Agreement, including maintaining an active applicable business license. In the event Construction Manager fails to keep in effect at all times all required license(s) and permit(s), District may, in addition to any other remedies it may have, terminate this Contract immediately notwithstanding Article XV herein. District shall not be responsible for any Construction Manager costs incurred by District as a result of such compliance, unless mutually agreed to in writing by the Parties.

**ARTICLE XIII
INDEMNITY**

Section 1. To the fullest extent permitted by law, with respect to all Work of the Construction Manager in performance of this Agreement, the Construction Manager agrees to protect, defend, indemnify and hold the District, its governing board, officers, employees and agents (excluding the Project inspector, architect, or other design professionals) ("Indemnified Parties"), free and harmless from and against any and all claims, losses, penalties, damages, settlements, costs, fees, charges, professional fees, including but not limited to attorneys' fees and court costs, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, reasonable fees incurred in investigating or resisting the same or causes of action of every kind and character (hereinafter collectively "Claims") in connection with or arising directly or indirectly out of the performance of this Agreement by the Construction Manager or any subcontractor. Without limiting the generality of the foregoing, any and all such claims, relating to personal injury, disease, or death of any person (including employees of the Construction Manager, its agents, representatives, or subcontractors), or any loss or damage to or destruction of property, that arises or is claimed to arise out of, or results directly or indirectly from, any act or omission of the Construction Manager, its subcontractors, agents, representatives, employees, or any other person for whom the Construction Manager is legally or contractually responsible, infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or actual or alleged violation of any other tangible or intangible personal or property right, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. Notwithstanding the foregoing, Construction Manager's defense and indemnity obligations shall apply to the proportionate extent of Construction Manager's fault, and not the extent arising from the active negligent acts or willful omissions, whether actual or alleged, of the Indemnified Parties.

Section 2. The Construction Manager shall provide District with prompt notice of all Claims covered by this Article, and shall investigate, respond to, and to the extent required by Article XIII, Section 1 above, assume the defense of, and fully defend all such Claims. The Construction Manager shall also provide District with monthly reports on the status and disposition of such Claims.

Section 3. The indemnity obligations of Construction Manager under this Article XIII shall be in effect whether or not the Construction Manager maintains or fails to maintain insurance as required by this Agreement, and shall survive the expiration or termination of this Agreement.

ARTICLE XIV INSURANCE

Section 1. Construction Manager shall maintain no less than the following coverages at all times during performance of the Work:

- (a) General Liability (including operations, products and completed operations, as applicable): \$3,000,000 per occurrence for bodily injury, personal injury & property damage. If commercial general liability insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- (b) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- (c) Workers Compensation: As required by the State of California.
- (d) Employers' Liability: \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, \$1,000,000 each employee bodily injury by disease.
- (e) Professional Liability: The Construction Manager shall maintain limits of no less than \$2,000,000 per occurrence.

Section 2. Construction Manager shall be responsible for ensuring all subcontractors have adequate insurance to cover their operations performed under this Agreement. Construction Manager shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors, or any deficient insurance held by a subcontractor in the event of a claim suffered by District.

Section 3. Endorsements and insurance policies shall include the following language: "This policy shall not be cancelled or reduced in required limits of liability or amounts of insurance until notice has been mailed to District, and the date of cancellation or reduction shall not be less than thirty (30) days after the date of receipt of notice." With the exception of Professional Liability insurance, endorsements shall clearly state that the District as an "Additional Insured" under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by any such entities.

Section 4. With respect to Professional Liability, coverage must be maintained, and evidence provided, for two (2) years following the termination of this Agreement. Construction Manager will include the contract number on all insurance-related correspondence, i.e., the insurance certificate itself. All policies required shall be issued by companies who hold a current policyholder's alphabetic and financial-size category rating of not less than A-VII, in accordance with A.M. Best. Carriers must be qualified to do business in California and maintain an agent for service of process within California.

Section 5. Construction Manager shall furnish District with certificates of insurance and required endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that Insurer to bind coverage on its behalf. All certificates and endorsements

are to be received and approved by District before work commences. Acceptance by District of a certificate or endorsement that varies from the requirements in this Article shall not constitute a waiver by District of strict compliance with the provisions herein.

Section 6. Construction Manager is responsible for ensuring that its carrier(s) send District updated certificates of insurance throughout the term of the Agreement.

Section 7. The commercial general liability and automobile liability policies maintained by the Construction Manager pursuant to this Agreement shall be primary to any insurance or self-insurance maintained by District.

Section 8. Failure to provide and continue in force any insurance as described this Article XIV shall be deemed a material breach of this Agreement.

ARTICLE XV TERMINATION

Section 1. District may terminate this Agreement, in whole or in part, at any time by written notice to the Construction Manager upon a determination by District that termination of the Contract is in the best interest of District. The Construction Manager shall be paid its costs on all Work performed, to the satisfaction of the District, up to the time of termination, plus reasonable demobilization and termination costs to be mutually agreed to in writing by the Parties based on documentation of such costs provided by Construction Manager. If the Construction Manager claims to have a termination claim, Construction Manager shall promptly comply with the dispute process provided for in Article XVI herein.

Section 2. District may, by written notice of default to the Construction Manager, terminate the whole or any part of the Contract in any one of the following circumstances:

- (a) If the Construction Manager fails to perform services within the time specified or any extension thereof; or
- (b) If the Construction Manager fails to perform any of the provisions of the Contract, or so fails to make progress as to endanger performance of the Contract in accordance with its terms, and in either of these two later circumstances does not commence cure of such failure within a period often (10) calendar days after receipt of written notice from District specifying such failure.
- (c) Should District terminate the Contract in whole or in part due to the default of Construction Manager as provided for in this Article XV, Section 2, District may procure, upon reasonable terms and in a reasonable manner as determined by District, services and materials similar to those so terminated so as to carry out the intent of the Contract. The Construction Manager shall be liable for all reasonable costs and damages incurred by District in procuring such similar service and materials. District may utilize payments due Construction Manager towards reimbursement of District's cost and damages.

- (d) If after notice of termination of this Contract it is determined for any reason that the Construction Manager was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Article XV, Section 1 above, and the Construction Manager shall be reimbursed for reasonable costs incurred under the terms of this Article XV.
- (e) If the District determines there are insufficient funds for the Project; this Agreement may be terminated immediately by District upon written notice to the Construction Manager. The Construction Manager shall be paid its costs on all Work performed up to the time of termination, plus reasonable demobilization and termination costs to be mutually agreed to in writing by the Parties based on documentation of such costs provided by Construction Manager.
- (f) In the event of termination for convenience or cause, Construction Manager shall promptly deliver to District all documents, including but not limited to all plans, drawings, designs, specifications, technical reports, operating manuals, notes, data, documentation, estimates, and computer software (in source code and object form code), pertaining to the Construction Manager's services performed through and including the effective date of termination.

ARTICLE XVI DISPUTES

Section 1. If either Party possesses a claim or dispute with respect to the duties and responsibilities required under this Agreement, that Party shall give the other written notice and demand an informal conference to meet and confer for settlement of the issues in dispute. Notice shall be given within fifteen (15) calendar days of knowledge of the claim or dispute. Upon receipt of a Party's demand, the other Party shall schedule a meet and confer conference, to take place within thirty (30) calendar days, at a time and location convenient to all Parties. Senior representatives of District and Construction Manager, with the authority to settle on the Party's behalf, will attend the meet and confer conference, in good faith, in an attempt to resolve any controversy or claim between the Parties. Attendance at this conference shall be a condition precedent to the initiation of mediation or a civil action.

Section 2. If the dispute remains unresolved after such meet and confer conference, either Party may seek resolution through referral to non-binding mediation. The mutually agreed to mediator must have a minimum of five (5) years' experience in the delivery of large construction projects (value of \$100 million or more), including construction related to public entities.

Section 3. If the dispute remains unresolved following non-binding mediation, then before seeking judicial resolution of the dispute in an appropriate court of the State of California, Construction Manager must comply with Government Code section 900 et seq.

Section 4. In the event of a dispute between the Parties as to performance of the Work or the interpretation of the project documents, including this Agreement, or payment or nonpayment for work performed or not performed, the Parties shall attempt to resolve the dispute as expeditiously as

possible and in accordance with this Article XVI. Pending resolution of any dispute, Construction Manager agrees to continue the work diligently to completion as if no dispute existed.

ARTICLE XVII NOTICES

All notices under this Agreement shall be in writing and shall be given by electronic, mail (e-mail), facsimile transmission or U.S. mail to the addresses listed below. Email and facsimile transmissions shall be documented by the sending party with transmission receipts and the transmissions will be deemed received on the date of transmission with delivery confirmation. Transmissions by U.S. mail shall be deemed to have been received forty-eight (48) hours after deposit in the U.S. mail in registered or certified form with postage fully prepaid.

If to the CM: Vanir Construction Management, Inc.
 Attn: Steven Whitehead, President
 4540 Duckhorn Drive, Suite 300
 Sacramento, CA 95834
 Phone: (916) 575-8888
 Email: steven.whitehead@vanir.com
 cc to: masood.mesbah@vanir.com

If to the DISTRICT: Natomas Unified School District
 Attn: Javetta Cleveland, Deputy Superintendent
 1901 Arena Blvd.
 Sacramento, CA 95834
 Phone: (916) 567-5457
 Email: jcleveland@natomasunified.org

ARTICLE XVIII MISCELLANEOUS

Section 1. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the Parties acknowledge that venue shall be in the County of Sacramento.

Section 2. This Agreement constitutes the entire agreement between the Parties and may be modified only by a written amendment executed by the Parties.

Section 3. Time is of the essence for all provisions of this Agreement in which a definite time for performance is specified.

Section 4. Due to the specific skills and experience required to complete the Work, and the competitive procurement upon which the selection of the Agreement was based for the completion of the Work, the obligations of the Construction Manager pursuant to this Agreement shall not be assigned by the Construction Manager. If the Construction Manager assigns, transfers, conveys, sublets or otherwise disposes of the Agreement or its right, obligations, title or interest therein, or any part thereof, such attempted or purported assignment, transfer, conveyance, sublease or other disposition shall be null, void and of no legal effect whatsoever, and the Agreement may, at the option of District, be terminated, revoked or annulled, and District shall thereupon be relieved and discharged from any

and all liability and obligations growing out of the same to the Construction Manager, and to its purported assignee or transferee.

Section 5. Failure of District or Construction Manager to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement shall not be deemed a waiver by that Party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

Section 6. Neither the Parties nor their respective counsel shall be deemed the drafters of this Agreement for purposes of construing its provisions. The language in all parts of this Agreement shall in all cases be construed according to fair meaning, not strictly for or against any of the Parties.

Section 7. Each and every provision of law and language required by law or any applicable regulation, shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either Party the contract shall be physically amended to make such insertion or correction.

Section 8. The Construction Manager's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the Construction Manager has, unless exempt, complied with all applicable nondiscrimination requirements.

Section 9. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

Section 10. This Agreement may be amended or modified only by written consent duly approved and executed by the Parties.

Section 11. This Agreement is subject to ratification by the District's governing board.
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

CONSTRUCTION MANAGER:

VANIR CONSTRUCTION
MANAGEMENT, INC.

By: _____

Name: _____

Title: _____

DISTRICT:

NATOMAS UNIFIED SCHOOL DISTRICT

By:  _____

Name: STEVEN WHITEHEAD

Title: President

EXHIBIT A

(Construction Management Services Scope of Work)

Under the general direction of the Superintendent, or designee, and dependent upon individual project needs, Construction Management Services "may" include the following services as applicable:

- A. Provide full service Professional and Technical Construction Management and Engineering services during the design and preconstruction stage of the Project, including the completion of certain "pre-construction services" during the design phase of the Project, including constructability reviews of the design at 50 percent and 100 percent of design completion, or other percentages of completion as directed by District, and assisting the District, as requested, in the preparation of independent cost estimates associated with the planned construction.
- B. Construction Manager shall conduct constructability reviews on draft construction plans and specifications and prepare an evaluation report of findings per applicable standards. The reviews shall identify, from a building contractor's perspective, contract plans and specification errors, omissions, and inconsistencies, and verify overall plan, specification, and estimate constructability, operability, and maintainability. The work could include but is not limited to the following:
 - C. Evaluate design plans and specifications and suggest appropriate changes to avoid potential claims, contract change orders, and revisions during the construction phase.
 - D. Evaluate design plans for geometric consistency and recommend needed changes or design exceptions.
 - E. Establish or evaluate Critical Path Method schedules, project duration, milestone dates, and applicable construction restrictions.
 - F. Evaluate compatibility of contract plans, specifications, and applicable standards.
 - G. Review construction details shown on the plans and verify they can be built and maintained.
 - H. Check for consistency between all drawings in plans.
 - I. Prepare and submit a comprehensive report on all findings during the constructability review.
 - J. Provide comprehensive services in the organization, coordination, management and administration required for all aspects of the development of the Project, including planning, programming, site investigation and design.
 - K. Develop and implement a comprehensive schedule for all activities necessary for the completion of construction of the Project, including a schedule for procurement of all necessary trades if necessary.
 - L. Set timeline parameters, review, and monitor the work of architects and planners in the development of plans, specifications and contract provisions for all phases of the Project.

- M. Develop Project work scopes and budgets.
- N. Coordinate tasks between principal parties including architects, environmental consultants, engineers, contractors and subcontractors.
- O. Coordinate and lead Project progress meetings to prepare and present reports to District and other stakeholders on the status and progress of the design of the Project.
- P. Oversee the preparation of, and certify to District staff all necessary reports, forms, and documents required by relevant local and state have been completed in compliance with all applicable guidelines and regulations, and collect and maintain all supporting information, data, and documentation in an organized and easily accessible manner.
- Q. Perform other related duties as assigned by the Superintendent or his designee(s).
- R. Manage and supervise professional consultants contracted by the District for the full array of architectural and construction services related to the Project to endeavor to verify their compliance with all applicable laws and regulations.
- S. Provide ongoing observation of the quality and progress of the work to assist the District and Architect in their efforts to have the work completed in conformance with the Project plans and specifications.
- T. Construction Manager will install or maintain (as the case may be appropriate), a Project database that shall include electronic copies of critical Project documents, including, but not limited to: (1) Contract Documents; (2) Submittals; (3) Change Order Requests; (4) Approved Change Orders; (5) Requests for Information ("RFI"); (6) Schedules; (7) Meeting Minutes; and (8) Progress Payment Applications. The system and the data therein shall be the property of the District and will remain with the District upon completion of the Project. Construction Manager will provide such access and training as to allow District employees access to the Project data. Construction Manager shall maintain a Submittal Log, RFI Log, and Change Order Log, all of which will be updated no less than once a week. Construction Manager shall update the Cost Control Reports and Schedules no less than once a month.
- U. If the Construction Manager becomes aware or has reason to know of any fault or defect in the Project or nonconformance with the Contract Documents, the Construction Manager shall give prompt notice thereof to the District and assist the District in developing a plan for correcting such deficiencies.
- V. Provide comprehensive services in the organization, coordination, management and administration required for the successful completion of the Project, including, without limitation, planning, programming, construction administration, and Project closeout. Nothing in this Agreement shall make Construction Manager liable for the acts or omissions of any construction contractor(s) retained by the District, nor shall Construction Manager be liable for such contractors' means, methods, safety practices, or their compliance with applicable laws, codes and/or regulations, nor their compliance with their contract documents, including

warranty obligations. Construction Manager is expressly not the "Controlling Employer" under OSHA multi-employer worksite regulations and has no authority relative to the jobsite safety programs enacted by the District's construction contractors, or their compliance therewith.

- W. Act as the District's agent, and perform all duties contractually required of the District to facilitate the timely and on-budget completion of the Project.
- X. Provide field office support and document control services including managing correspondence, processing progress pay estimates and extra work billings, reviewing billings, and setting-up and maintaining complete and accurate Project files.
- Y. Verify that all necessary permits necessary for construction are obtained and remain in place for the duration of the Project, including endeavoring to verify compliance with all applicable stormwater requirements by the District's construction contractors.
- Z. Maintain and update the District's files for the Project.
 - aa. Review and evaluate submittals, data, documents, pay requests, etc. related to the payment of contractors working on the Project.
 - bb. Coordinate and lead Project progress meetings to prepare and present reports to District and other stakeholders on the status and progress of the Project.
 - cc. Provide District staff with weekly construction activity reports beginning at award of the CM contract until final acceptance as required.
 - dd. As requested by the District, provide regular updates to the District's Board of Education, appear at Board meetings to present and discuss the status of the Project, explain contractual arrangements, discuss budgetary concerns and permit the Board of Education to make informed decisions regarding the Project when necessary.
 - ee. Participate in all meetings determined to be necessary (with contractors and consultants, stakeholders, and other interested parties) to enable the successful completion of the Project.
 - ff. Administer and monitor the District's Project budget and progress of work for all phases of the District's Project.
 - gg. Work with District legal counsel to prepare and finalize all bid documents and/or requests for proposals to secure the necessary contractors and trades determined to be necessary for the completion of the Project.
 - hh. Manage the procurement of all necessary contractors and trades determined to be necessary for the completion of the Project, including managing pre-bid conferences, walk-throughs, and the evaluation of proposals.

- ii. Work with District legal counsel to prepare contracts for selected consultants and/or contractors.
- jj. Monitor progress on the completion of the Project, and assist in coordination of approval of progress payments, including reviewing and recommending progress payments in coordination with the architect of record and/or inspector of record and obtaining all necessary approvals from the District's fiscal department in processing progress payments and approving completed work for payment of invoices. Final payment approval shall be subject to District approval.
- kk. Act as the District's agent involving any disputes arising during Project construction, including revision of scope of work due to changed Project or site conditions, negotiating changes to contract and change orders or warranty issues with contractors or subcontractors due to defective construction.
- ll. Review, recommend, and provide contract dispute expertise for Project protests, potential claims, and contract claims. This work includes but is not limited to claims resolution principles, claims avoidance techniques, timeline awareness, risk analysis, contractor's schedule analysis, and claim report writing.
- mm. As requested by the Superintendent or Board of Trustees, provide a completion report for the Project including recommendations for improving District construction standards, plans, and specification, contract forms, and procedures.
- nn. Coordinate the work of architect(s) and contractors in their preparation of punch list items itemizing defects in construction materials and/or quality of work including holdback of final payment until Project can be successfully closed out.
- oo. Perform final certification and release of contractor in support of a stipulated warranty process in coordination with appropriate District staff.
- pp. Coordinate/originate contractor quality control requirements to be included in the construction contract where appropriate.
- qq. Perform quality assurance for all elements of the construction contract(s) by monitoring construction activities performed by the contractor(s).
- rr. Monitor portions of the Project as worked on by the specific trade contractors and inform the District of any concerns related to quality assurance and overall job-site safety. District acknowledges that Construction Manager is not the Inspector of Record, but is retaining Construction Manager for its skills and experience in coordinating the completion of projects and providing insight and recommendations based on its building contractor experience.
- ss. Provide photo and video documentation to verify conditions and progress of the Project prior to, during, and following construction. Toe type of documentation or

services shall be agreed to by District and CM firm and can include time-lapse photography services.

- tt. Act as the District's agent concerning the commissioning of the Project, including verifying that the Project is completed in accordance with all applicable contractor documents and Project specifications.
- uu. Verify that District staff receives all necessary training associated with the maintenance and successful operation of the completed Project.
- vv. Perform additional duties as directed by the Superintendent or his designee.

EXHIBIT B
Hourly Rate Schedule*

Project Director	\$195
Senior - Project / Construction Manager	\$175
Project / Construction Manager	\$165
Project / Field Engineer	\$135
Scheduler	\$160
Estimator	\$160
Constructibility Reviewer	\$160
Contract Administrator	\$120
Clerical Support	\$95

*Rates shown are for current fiscal year and will be increased July first of every year by 3% (rounded to nearest dollar) starting on July 1, 2021.