

SOLANA RANCH HVAC REPLACEMENT PROJECT PRECONSTRUCTION SERVICES AGREEMENT

By and Between

SOLANA BEACH SCHOOL DISTRICT

and

[INSERT CONTRACTOR NAME]

Dated and Effective as of:

[Insert Board Approval Date]

SOLANA RANCH HVAC REPLACEMENT PROJECT
PRECONSTRUCTION SERVICES AGREEMENT

This Solana Ranch HVAC Replacement Project Preconstruction Services Agreement ("PSA") is made effective as of [insert Board approval date] ("Effective Date"), by and between: (i) the Solana Beach School District ("District"), a public school district organized and existing pursuant to the laws of the State; and (ii) [insert Contractor full legal name] ("Contractor"), a [insert type of business entity and state of formation] designated as entity number [insert entity number] by the California Secretary of State. The District and Contractor may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. California Education Code Section 17406 permits any school district located in the State, after undertaking a specified competitive selection process, to lease real property owned by the school district to any person, firm, or corporation, if the instrument requires the lessee to construct or provide for construction of improvements on the leased premises, for the use of the school district during the term of the lease, and provides that title to the improvements shall vest in the school district at the expiration of the lease. Such process of constructing school facilities is known as the Lease-leaseback (or "LLB") construction delivery method.

B. The District desires to implement and provide for completion of its Solana Ranch HVAC Replacement Project ("Project") using the LLB construction delivery method. On , 2022, following completion by the District of the competitive selection process required by Education Code Section 17406 ("Competitive Selection Process"), the Board of Education of the Solana Beach School District ("District Board") adopted Resolution No. to thereby approve an interrelated set of agreements that include: (i) this PSA; (ii) the "Solana Ranch HVAC Replacement Project Site Lease Agreement" ("SLA"); (iii) the "Solana Ranch HVAC Replacement Project Leaseback Agreement" ("LBA"); and (iv) the "Solana Ranch HVAC Replacement Project Construction Services Agreement" ("CSA"). The purpose of this PSA, the SLA, the LBA, and the CSA (collectively, the "LLB Agreements") is to implement and provide for construction of the Project using the LLB construction delivery method authorized by Education Code Section 17406.

C. A general description of the Project is set forth in Exhibit A attached to the CSA. The property on and at which the Project is to be constructed ("Property") is owned by the District and located within the boundaries of the City of San Diego ("City"), the County of San Diego ("County"), and State of California ("State"). The specific portions of the Property that shall serve as the site for construction of the Project (collectively, the "Project Site") are described and depicted in Exhibit A attached to the SLA.

D. In adopting Resolution No. , the District Board thereby determined that, subject to the conditions precedent set forth in LLB Agreements, it is in the best interests of the District to provide for construction of the Project using the LLB construction delivery method authorized by Education Code Section 17406 by: (i) performance by the Contractor, pursuant to this PSA, of certain preconstruction services for the Project; (ii) leasing the Project Site to the Contractor, pursuant to the SLA; (iii) leasing the Project and the Project Site back from the Contractor, and obtaining financing for the Project from the Contractor, pursuant to the LBA; and (iv) performance by the Contractor, pursuant to the CSA, of all work and services required to construct and close out the Project ("Work").

E. The Parties acknowledge that they have set forth their agreement relating to the Project in the separate LLB Agreements solely for purposes of contracting convenience and, therefore, the Parties intend and agree that: (i) the LLB Agreements shall be interpreted as an integrated and interrelated set of agreements that, collectively, are a single “instrument” as that term is used in Education Code Section 17406; (ii) the LLB Agreements shall concurrently take effect, although the SLA, LBA, and CSA shall become operative only as provided in the SLA; and (iii) any capitalized term used, but not defined, in this PSA shall have the meaning specified in another of the LLB Agreements.

F. By entering into the LLB Agreements, and without limiting anything else in the LLB Agreements, the Contractor represents and warrants that it is duly licensed in the State as a general building contractor, is qualified and experienced in construction of the type of educational facilities included in the Project, and is willing and hereby agrees to perform all work and services required in connection with the Project, in accordance with the terms and conditions set forth in the LLB Agreements.

Now, in consideration of the foregoing and of their respective rights and obligations pursuant to the LLB Agreements, the Parties hereby agree as follows:

AGREEMENT

PART 1: TERM, SCOPE OF SERVICES, AND COMPENSATION

Section 1.1 Scope of Services. The Contractor shall furnish all labor, materials, tools, equipment, services, and other things as appropriate and necessary for the Contractor to fully and adequately perform and provide the preconstruction services to be provided pursuant to this PSA and as are described in Exhibit “A” attached to this PSA (“Preconstruction Services”).

Section 1.2 Term of PSA. The term of this PSA (“PSA Term”) shall commence on the Effective Date and shall expire on the earlier of: (i) the date the District issues a Notice to Proceed for the Project; or (ii) the date that is one year after the Effective Date. The Parties may agree in writing to extend the PSA Term. However, for avoidance of doubt, a primary goal among others underlying this PSA is that the Contractor shall perform the Preconstruction Services within such times as will allow the District to obtain all required approvals for the Project prior to the Required Commencement Date specified in Exhibit A to the CSA, so that the District may issue a Notice to Proceed prior to the Required Commencement Date.

Section 1.3 Compensation for Preconstruction Services. The District shall pay to the Contractor, as full and all-inclusive compensation for satisfactory completion of all Preconstruction Services required pursuant to this PSA, such total not-to-exceed amount as specified in Exhibit “B” attached to this PSA (“Base Fee”). Exhibit B hereto also sets forth the portions of the Base Fee payable for the separate components of the Preconstruction Services as are described in Exhibit A hereto. The compensation to the Contractor for “Other Duties” as described in Exhibit A hereto is included in the Base Fee as allocated to the other components of the Preconstruction Services and, therefore, Exhibit A hereto does not specify specific compensation payable to the Contractor for the Other Duties.

Section 1.4 Additional Services. The Parties may agree in a written amendment to the LLB Agreements that the Contractor will perform work or services pursuant to this PSA that are not included within the Preconstruction Services specified in Exhibit A hereto (“Additional Services”). Each such

amendment shall be subject to approval by the District Board, and the District shall not be required to compensate the Contractor for any Additional Services performed in the absence of such approval. The District shall compensate the Contractor for performance of Additional Services as provided in the applicable amendment to this PSA.

Section 1.5 Reimbursement of Expenses. The District shall not be required to reimburse or otherwise compensate the Contractor for any expenses incurred by the Contractor in connection with the performance of the Preconstruction Services unless the District provides written authorization for such expenses in advance of the Contractor incurring such expenses. To the extent the Contractor requires reproductions of plans, specifications, addenda, and/or other documents relating to design of the Project in order to perform the Preconstruction Services, then, subject to the foregoing provisions of this Section, the District shall reimburse the Contractor for the costs of such reproductions. The Contractor shall, in each case, bill any authorized expense to the District with markup not in excess of five percent of the reasonable actual cost.

Section 1.6 Contractor Invoices. In order to obtain compensation and/or reimbursement from the District, the Contractor must submit to the District, each month during the PSA Term, an itemized invoice that indicates in reasonable detail the Preconstruction Services completed during the prior monthly period or portion thereof. Each invoice must be accompanied by any and all documentation reasonably required to evidence the amounts specified in the invoice. The District shall, in each case, pay the undisputed portion of an invoice within thirty days of the date it receives the invoice.

PART 2: PERFORMANCE OF THE SERVICES

Section 2.1 Responsibility for Performance of the Services. The Contractor shall be responsible for all aspects of the performance of the Preconstruction Services, including, without limitation: (i) coordinating and directing its personnel; (ii) submitting requests to the District for information that reasonably must be supplied by the District; and (iii) performing the Preconstruction Services in accordance with this PSA and all applicable federal, State and local laws, rules, regulations, and other requirements. In providing the Preconstruction Services, the Contractor must coordinate with, and be available at all reasonable times to, the District. All products of the Preconstruction Services are subject to approval by the District in its reasonable discretion.

Section 2.2 Authorized Contractor Representatives. Unless and until changed in accordance with this Section, the Authorized Contractor Representatives specified in Exhibit F to the CSA shall be the Contractor's representatives for all purposes of this PSA, and the Authorized Contractor Representatives' addresses and other contact information shall be as specified in Exhibit F to the CSA. The Contractor must ensure that the Authorized Contractor Representatives have full authority to represent and act on behalf of the Contractor for all purposes of this PSA. The Authorized Contractor Representatives must supervise and direct the Preconstruction Services, and shall be responsible for all means, methods, techniques, sequences and procedures, and for the satisfactory coordination of the Preconstruction Services. If any Authorized Contractor Representative becomes no longer available or able to represent the Contractor in connection with the Project, the Contractor may seek the District's approval of a substitute Authorized Contractor Representative, which approval the District shall not unreasonably delay, condition or deny; provided that the proposed substitute must have adequate qualifications and experience as evidenced by documentation provided to the District.

Section 2.3 Contractor Consultants. The Preconstruction Services are professional services and the Contractor represents and warrants that it can perform the Preconstruction Services using its own personnel. However, if the Contractor desires to employ any consultants for purposes of this PSA (each a "Precon Consultant"), and subject to Subsection 5.7 herein, the Contractor must first obtain the written consent of the District, which consent the District in its sole discretion may deny, delay, or condition. Except to the extent the District approves any Precon Consultants, the Contractor may not delegate to any third party, or subcontract for the performance by any third party of, any of the Preconstruction Services. In no event shall the District, in connection with this PSA, be responsible for compensating any Precon Consultant or other third party.

Section 2.4 Schedule of Services. Time is of the essence with respect to each and every provision of this PSA. The Contractor must: (i) complete all Preconstruction Services within the PSA Term; and (ii) meet any interim or other schedules and deadlines established by the District, established by the Parties, or necessary to ensure timely commencement of construction of the Project. To facilitate the foregoing, the Contractor must, within ten days after the Effective Date, provide to the District a written schedule setting forth the anticipated milestone and completion dates for the various elements of the Preconstruction Services as will meet the District's goals and requirements for the Project ("Schedule of Services"). Upon reasonable request of the District or as otherwise reasonably necessary in connection with performance of the Preconstruction Services, the Contractor must modify the Schedule of Services: (i) to provide additional detail; (ii) to conform to the anticipated schedule for commencement of construction of the Project; (iii) to accommodate the activities and scheduling of the Architect and/or DSA; and/or (iv) for other purposes related to the Project.

Section 2.5 Standard of Care Applicable to Services. The Contractor must perform all Preconstruction Services in a reasonable, skillful and competent manner, at a minimum consistent with: (i) the standards employed by general building contractors that are qualified and experienced in providing preconstruction services in connection with construction of public school facilities in the State using the LLB construction delivery method; and (ii) what a reasonable general building contractor meeting the requirements described in the foregoing clause would, as applicable, advise or do in similar circumstances. The Preconstruction Services are to be provided from the perspective of such general building contractors and not from the perspective of a design professional. The Contractor is not an architect or engineer and, therefore, the LLB Agreements shall not be deemed or construed to require that the Contractor assume responsibility for matters that are within the Architect's scope of responsibility. The Contractor shall perform, at its own cost and expense and without reimbursement from the District, any and all services and work necessary to correct errors or omissions arising from the Contractor's failure to adhere to the standard of care specified in this Section.

Section 2.6 Contractor Must Comply With Applicable Law. The Contractor shall keep itself fully informed of, and fully in compliance with, all federal, State and local laws, rules, regulations and other governmental requirements that in any manner affect or relate to the performance of the Preconstruction Services, including, without limitation, laws relating to construction of public works and/or public projects. If the Contractor performs any portion of the Preconstruction Services knowing it to be contrary to any such law or other requirements and without giving written notice of that fact to the District, the Contractor shall be solely responsible for any and all costs incurred by the District that arise from the failure to comply with such law or other requirement.

Section 2.7 Information Provided by Others. The Contractor does not warrant the accuracy or completeness of documents, data or other information: (i) prepared or provided by parties other than the Contractor or its Precon Consultants; or (ii) provided by the District and used in connection with the

performance of the Preconstruction Services. Notwithstanding the foregoing, the Contractor shall review and make reasonable efforts to determine whether such District-provided documents, data and information is, in each case, sufficiently accurate and complete for purposes of the Preconstruction Services.

Section 2.8 Preconstruction Services Records. The Contractor shall maintain complete and accurate records with respect to all Preconstruction Services ("Precon Records"), including, without limitation, the tangible products of the Preconstruction Services, records of costs and expenses incurred in performing Preconstruction Services, records relating to use of Precon Consultants in connection with the performance of the Preconstruction Services, and any other documents and information prepared pursuant to this PSA. All such Precon Records must be organized in logical categories and in chronological sequence, clearly identified, and maintained in the Contractor's principal place of business. In accordance with Government Code Section 8546.7, the State has the right to examine, review, audit and/or copy the Precon Records during the three-year period following final payment to the Contractor pursuant to this PSA. In addition, the District, DSA, SAB, and OPSC each hereby has the right to examine, review, audit and/or copy the Precon Records at all times prior to expiration of the four-year period commencing upon: (i) final payment to the Contractor pursuant to this PSA, if the SLA, LBA, and CSA do not become operative; or (ii) final payment to the Contractor pursuant to the LBA, if the SLA, LBA, and CSA become operative. Therefore, the Contractor shall preserve and retain all such Precon Records until expiration of the applicable four-year period or, if an examination, review or audit is commenced but not completed within such four-year period, until such examination, review or audit has been completed. The Contractor, upon request, shall make the Precon Records available for the purposes described in this Section at all reasonable times during the period the Contractor is required to preserve and maintain the Precon Records.

PART 3: DISTRICT RIGHTS AND RESPONSIBILITIES

Section 3.1 Authorized District Representatives. Unless and until changed in accordance with this Section, the Authorized District Representatives specified in Exhibit F to the CSA shall be the District's representatives for all purposes of this PSA. The District may change any Authorized District Representative as provided in the CSA. The Contractor must direct all requests for information, notices, and other communications relating to this PSA and the Preconstruction Services to the Authorized District Representatives.

Section 3.2 District Direction and Approvals. The Contractor shall not accept direction or orders with respect to this PSA or the Preconstruction Services from any person other than an Authorized District Representative. Subject to the requirement that the District Board must approve any amendments or other modifications to this PSA, each Authorized District Representative shall have the power to act on behalf of the District for purposes of this PSA.

Section 3.3 District Response to Contractor Requests. The Authorized District Representatives shall endeavor to respond within a reasonable time to each request for information or other communication from the Contractor.

Section 3.4 District Use of Information. The District shall not be limited in any way in its use of the documents, data and other information prepared and/or provided by the Contractor in connection with the performance of the Preconstruction Services; provided that any such use not within the purposes intended by this PSA shall be at the District's sole risk.

PART 4: CONTRACTOR STATUS AND EMPLOYEES

Section 4.1 Contractor is an Independent Contractor. For all purposes related to this PSA, the Contractor shall be deemed and construed to be an independent contractor. The Contractor, subject to applicable requirements of this PSA, shall determine the means and methods for performance of the Preconstruction Services. The personnel of the Contractor and its Precon Consultants shall at all times be subject to the exclusive direction and control of the Contractor and shall not be construed to be employees of the District. The Contractor shall pay or cause to be paid all wages, salaries, and other amounts due such personnel in connection with their performance of Preconstruction Services and as required by law. The Contractor and its Precon Consultants shall be responsible for all reports and obligations respecting such personnel, including, but not limited to, social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

Section 4.2 Contractor Personnel. The Contractor must ensure that any and all personnel who perform any of the Preconstruction Services have sufficient skill and experience to satisfactorily perform and complete the Preconstruction Services assigned to them. The Contractor, its Precon Consultants, and their respective personnel must have all licenses, permits, qualifications and approvals of whatever nature as are legally required to perform the Preconstruction Services, and they shall maintain the same in effect at all times during the PSA Term. Upon request of the District, the Contractor shall permanently bar any person from performing any of the Preconstruction Services and from being on any property owned or controlled by the District who is determined by the District: (i) to be uncooperative or incompetent; (ii) to have failed or refused to perform the Preconstruction Services in a manner reasonably acceptable to the District; or (iii) to be a threat to the safety of any person(s) or property. The Contractor shall not permit any such barred person to perform any of the Preconstruction Services or to perform any other work or services on or at the Project Site or any other property owned or controlled by the District. If any of the individuals performing any of the Preconstruction Services will at any time be present at the Project Site, then, with respect to each such individual, the Contractor shall comply with the requirements of Section 8.2 of the General Provisions (i.e., criminal-history background checks).

Section 4.3 Equal Opportunity Employment. The Contractor hereby represents and warrants that it is an equal opportunity employer and that, in connection with its activities pursuant to the LLB Agreements, the Contractor shall not discriminate against any employee, applicant for employment, or other person in violation of applicable law, including, without limitation, on the basis of any person's race, religion, color, national origin, handicap, ancestry, sex or age. Such requirement for non-discrimination shall apply to, without limitation, all activities related to initial employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all applicable provisions of any District non-discrimination, affirmative action, or similar programs or guidelines in effect as of the Effective Date.

Section 4.4 Certification Regarding Workers' Compensation. By executing and delivering this PSA, the Contractor shall be deemed and construed to thereby certify that it is aware of the provisions of Labor Code Section 3700, which requires every employer to obtain Workers' Compensation insurance or to undertake self-insurance in accordance with the provisions of the Labor Code, and Contractor agrees that it shall comply with such provisions before commencing the performance of the Preconstruction Services.

Section 4.5 Prevailing Wages. The Contractor represents and warrants that it is aware of and understands the provisions of Labor Code Section 1720 *et seq.*, Labor Code Section 1770 *et seq.*, and

Title 8 of the California Code of Regulations that pertain to payment of “prevailing wages” and related requirements in connection with public works projects (collectively, the “Prevailing Wage Laws”). To the extent the Prevailing Wage Laws are applicable to the Preconstruction Services, the Contractor hereby assumes sole responsibility for compliance with the Prevailing Wage Laws. If the Prevailing Wage Laws are applicable to the Preconstruction Services, the Contractor must: (i) obtain from the Department of Industrial Relations, Division of Labor Statistics and Research, a copy of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform the Preconstruction Services in effect as of the Effective Date (“Wage Rates”); (ii) provide a copy of such Wage Rates to the District; (iii) post a copy of such Wage Rates at the Contractor’s principal place of business and at all other locations where the Preconstruction Services will be performed; and (iv) upon request, make copies of the Wage Rates available to interested parties.

Section 4.6 Skilled and Trained Workforce Requirements. If and to the extent any portion of the Preconstruction Services falls within an apprenticeable occupation as contemplated by Education Code Section 17407.5, the Contractor shall use a skilled and trained workforce to perform such portion of the Preconstruction Services consistent with Subsection 10.6.2 of the General Provisions, and such obligation shall be enforceable by the District, as provided in Subsection 10.6.2, in each case that the Contractor fails to comply with such requirements.

PART 5: INSURANCE AND INDEMNIFICATION

Section 5.1 Minimum Required Insurance Coverage. The Contractor must obtain and maintain at all times during the performance of the Preconstruction Services such policies of insurance coverage as may be required by law or other governmental requirement, but, at a minimum, shall obtain and maintain the insurance coverages described below in this Section. The Contractor acknowledges that the other LLB Agreements specify additional and/or other insurance-related requirements that shall be applicable in connection with those other LLB Agreements becoming operative. Subject to the foregoing, the insurance coverages required by this Section include the following:

- (i) General Liability Insurance. Broad-form commercial general liability insurance, written on an “occurrence” basis (modified occurrence and claims-made not acceptable), providing coverage with a combined single limit of not less than \$1,000,000 for all activities conducted by Contractor pursuant to this PSA (“General Liability Policy”). If any aggregate limit applies (whether products/completed operations or all other loss), not less than \$1,000,000 must apply specifically to this PSA. No deductible or self-insured retention in excess of \$25,000 shall be applicable to the General Liability Policy, except with the advance written consent of the District, which consent the District shall not unreasonably deny, condition or delay. The General Liability Policy must name the District as an additional insured and must include a cross-liability endorsement and a waiver of the insurer’s rights of subrogation against the District. The General Liability Policy must include coverage as is reasonably appropriate to protect the interests of the District, the District Indemnitees (defined in Section 5.10 herein) and the Contractor, including, without limitation, coverage for contractual liability assumed by the Contractor pursuant to this PSA. The General Liability Policy shall be primary and not contributing with respect to any insurance or self-insurance programs covering or maintained by the District and/or any of the District Indemnitees.
- (ii) Vehicle Liability Insurance. Business vehicle liability insurance with a combined single limit of not less than \$1,000,000 per occurrence (“Vehicle Liability Policy”). If any aggregate limit

applies, not less than \$1,000,000 must apply specifically to this PSA. The Vehicle Liability Policy must name the District as an additional insured, and must include a cross-liability endorsement and a waiver of the insurer's rights of subrogation against the District. The Vehicle Liability Policy must include coverage for owned, hired, and non-owned vehicles. The Vehicle Liability Policy shall be primary and not contributing with respect to any insurance or self-insurance programs covering or maintained by the District and/or any of the District Indemnitees.

- (iii) **Workers' Compensation Insurance.** Workers' compensation insurance in accordance with Section 3700 *et seq.* of the Labor Code. The Contractor shall also obtain and maintain during the PSA Term a policy of employers' liability insurance with limits of not less than \$1,000,000 per incident.
- (iv) **Professional Liability Insurance.** Professional liability insurance with a combined single limit of not less than \$1,000,000 per claim ("Professional Liability Policy"). The Professional Liability Policy shall provide coverage for claims arising out of the performance of the Preconstruction Services pursuant to this PSA. The Professional Liability Policy shall provide or be endorsed to provide that not less than \$1,000,000 of any applicable aggregate coverage limit shall be dedicated for and apply specifically to this PSA.

Section 5.2 Professional Liability Insurance. Notwithstanding anything to the contrary: (i) the Contractor must have the Professional Liability Policy in full force and effect prior to commencing the Preconstruction Services; (ii) each renewal or replacement of the Professional Liability Policy that occurs during the PSA Term must have a retroactive date that is prior to the date the Contractor commenced the Preconstruction Services; and (iii) the Contractor must maintain the Professional Liability Policy in full force and effect, AND APPLICABLE TO CLAIMS ARISING FROM THIS PSA, without any gaps in coverage, for a period of at least two years following final completion and acceptance of the Preconstruction Services. If the claims reporting period applicable to the Professional Liability Policy, as specified in or determined pursuant to the Professional Liability Policy, will terminate prior to the end of such two-year period, the Contractor must at its cost obtain and provide to the District an endorsement to extend the claims reporting period to include whatever remains of such two-year period. Otherwise, as and when necessary, the Contractor must at its cost obtain a supplemental extended reporting period (tail) applicable to the Professional Liability Policy to provide coverage until the end of such two-year period. Such tail coverage shall be required, for example: (i) if the Contractor intends to switch insurance carriers and the prospective new carrier will not agree to cover claims arising from the Preconstruction Services submitted at any time prior to the end of such two-year period; (ii) if the Contractor's business is to be wound-up or otherwise terminated, whether voluntarily or involuntarily; or (iii) when necessary for any other reason to ensure that professional liability insurance applicable to the Preconstruction Services is in effect at all times as required by this Part 5.

Section 5.3 Insurer and Policy Standards. The insurance policies required pursuant to this Part 5 must be issued by one or more insurers licensed to do business in this State and having an A.M. Best Company rating of not less than an "A Minus" and Financial Size Category of not less than "VIII."

Section 5.4 Evidence of Required Insurance Coverage.

Subsection 5.4.1 Certificates of Insurance, Policies, and Endorsements. Prior to commencing any of the Preconstruction Services, the Contractor must provide to the District such duly-authorized and executed certificates of insurance (each a "Certificate of Insurance") as adequately evidence that all insurance coverages to be provided by the Contractor pursuant to this Part 5 are in full

force and effect. Within ten days of any request from the District, the Contractor also must provide to the District complete copies of any or all insurance policies (including, without limitation, all applicable endorsements) that include the insurance coverages to be provided by the Contractor pursuant to this Part 5. The District may review the insurance policies and Certificates of Insurance to determine compliance with the requirements of this Part 5, but no review or failure to review by the District shall be deemed or construed to limit, condition or qualify the Contractor's obligations pursuant to this PSA, or to waive or release any of the District's rights pursuant to this PSA.

Subsection 5.4.2 Notice from Insurer. Each insurance policy and each Certificate of Insurance must expressly require or be endorsed to require that the insurer provide written notice to the District not less than thirty days prior to any cancellation, termination, reduction in coverage, or expiration without renewal of the policy, except in the case of termination for non-payment of premium, in which case the insurer must provide notice not less than ten days prior to termination. Including the foregoing requirements only in a Certificate of Insurance, and not also in each corresponding policy, shall not be acceptable. Language in any insurance policy or Certificate of Insurance to the effect that the insurer shall "endeavor" to provide such notice shall not be acceptable. The District, in its reasonable discretion, may waive the foregoing requirements if the Contractor provides written documentation evidencing the Contractor's good-faith, reasonable efforts to obtain endorsements consistent with the foregoing requirements, but, notwithstanding those efforts, the Contractor's insurer has refused to issue such endorsements for any reason(s) other than Contractor unwillingness to pay the cost of such endorsements.

Subsection 5.4.3 Notice from Contractor. Separate from and independent of its insurer's obligations pursuant to Subsection 5.4.2, and with respect to each insurance policy that the Contractor is to have in effect pursuant to this PSA, the Contractor shall provide written notice to the District not less than thirty days prior to any cancellation, termination, reduction in coverage, or expiration without renewal of the policy, except in the case of termination for non-payment of premium, in which case the Contractor must provide notice not less than ten days prior to termination. Any and each failure of the Contractor to provide such notice shall be deemed to constitute a material breach of the Contractor's obligations pursuant to this PSA.

Section 5.5 Insurance Policy Renewal. Not less than thirty days prior to expiration, during the PSA Term, of any policy of insurance required pursuant to this Part 5, the Contractor must renew such policy of insurance and provide (or cause its insurer to provide) to the District an updated Certificate of Insurance for such policy. Any and each failure of the Contractor to so renew and provide a Certificate of Insurance for any policy of insurance required pursuant to this PSA shall be deemed to constitute a material breach of the Contractor's obligations pursuant to this PSA.

Section 5.6 Effect of Insurance Coverage and Proceeds. Any insurance proceeds received by the Contractor and attributable to claims or damages for which the District or any of the District Indemnitees is found to be liable shall serve to offset their respective liability for such claims or damages. Except as may be expressly stated in this PSA, no insurance coverage maintained by the Contractor or proceeds of insurance received by any of the Contractor, the District, or any of the District Indemnitees shall be deemed or construed to eliminate, limit or condition the District's rights or remedies, or the Contractor's responsibilities, arising from any act or omission by the Contractor in connection with this PSA.

Section 5.7 Precon Consultant Insurance.

Subsection 5.7.1 Generally. If the District authorizes the Contractor to use any Precon Consultants, the Contractor must require that each such Precon Consultant: (i) obtain and maintain insurance coverage in accordance with Sections 5.1 through 5.6, inclusive, herein other than professional liability insurance; and (ii) otherwise be subject to the applicable insurance-related provisions of Sections 5.1 through 5.6, inclusive, herein. Upon request of the Contractor, the District may agree to coverage limits for insurance maintained by a Precon Consultant that are lower than those required for the Contractor, based on the Precon Consultant having a limited scope of responsibility resulting in less potential liability for the District and/or the District Indemnitees. The Contractor shall include in each contract with its Precon Consultants such provisions as are adequate and appropriate to effect the requirements of this Section. The Contractor shall not allow any Precon Consultant to commence performance of any of the Preconstruction Services until it has provided to the District the evidence of insurance coverage required pursuant to this Subsections 5.7.1.

Subsection 5.7.2 Professional Liability Insurance. In connection with requests by the Contractor for District consent to use of Precon Consultants, the Contractor must in each case concurrently consult with the District regarding whether it will require the Precon Consultant to have a policy of professional liability insurance in effect. In each case, concurrently with initiating consultation, the Contractor must provide to the District at least one cost proposal for the Precon Consultant's Professional Liability Policy and, if the District determines that the proposed cost is not reasonable, the Contractor shall upon request of the District provide one or more cost proposals from alternative insurers. Notwithstanding anything else to the contrary, if the District requires that any particular Precon Consultant have a Professional Liability Policy in effect, then, the Precon Consultant: (i) must have its Professional Liability Policy in full force and effect prior to commencing any professional services in connection with the Project; and (ii) otherwise shall be subject to the applicable insurance-related provisions of Sections 5.1 through 5.6, inclusive, herein.

Section 5.8 Contractor Indemnification. The Contractor shall defend, indemnify and hold-harmless the District, in accordance with Part 21 of the General Provisions, with respect to any and all claims, demands, actions, damages, losses, costs (including, without limitation, attorneys' fees and expenses) and other liabilities of any nature whatsoever arising from or connected with the performance of the Preconstruction Services, regardless of whether arising from a breach by the Contractor of its obligations pursuant to this PSA. With respect to acts, omissions and/or incidents that occur prior to termination of this PSA Agreement, the Contractor's obligations pursuant to this Section shall survive the expiration or termination of this PSA and/or performance or completion of any or all Preconstruction Services.

Section 5.9 Precon Consultant Indemnification. If the District authorizes the Contractor to use any Precon Consultants, the Contractor must require that each such Precon Consultant agree in writing to indemnify, defend and hold-harmless the District in accordance with Section 5.8 herein. The Contractor shall include in each contract with its Precon Consultants such provisions as are adequate to effectuate the requirements of this Section. The Contractor shall not allow any Precon Consultant to commence performance of any Preconstruction Services until it has so agreed in writing to indemnify the District.

Section 5.10 Scope of Indemnification Obligations. For purposes of each and every obligation set forth in this PSA relating to indemnification, holding-harmless and/or defending the District, the reference to the District shall be deemed and construed to be a reference to the District, the District

Board and each member thereof, and the District's other officers, employees and agents (collectively, not including the District, the "District Indemnitees"), and each of them. For avoidance of doubt, the term "District Indemnitees" does not include the Architect or the District's project manager, but it does include the Inspector of Record.

PART 6: TERMINATION OF AGREEMENT

Section 6.1 District Termination for Convenience. The District, at any time, may terminate this PSA, in whole or in part, without needing to establish that cause for termination exists, by providing written notice of termination to the Contractor. The termination shall be effective immediately upon receipt by the Contractor of the termination notice, and the Contractor shall, upon receipt of the termination notice, immediately cause any then-ongoing Preconstruction Services to cease to the extent specified in the notice. In the event of such termination for convenience, the District shall compensate the Contractor for all Preconstruction Services satisfactorily completed prior to the effective date of the termination, but the District shall not be required to compensate the Contractor for any profits, overhead or other amounts attributable to any Preconstruction Services that the Contractor presumably would have performed if not for the termination.

Section 6.2 District Termination for Cause. The District may, by written notice to the Contractor, terminate this PSA, in whole or in part, if the Contractor has breached any of its material obligations pursuant to this PSA and, after notice and opportunity to cure as provided in this Section, failed to cure such default. If the District determines that the Contractor is so in default, the District may provide written notice of default to the Contractor. The Contractor shall have twenty days after receipt of the notice of default to cure, to the District's reasonable satisfaction, the default(s) specified in the notice of default or to make other arrangements satisfactory to the District in its sole discretion. If the Contractor fails within the required time to cure the specified default(s) or make other arrangements satisfactory to the District, then the District may provide a notice of termination, which shall be effective immediately. In the event of such termination for cause, the District shall compensate the Contractor for all Preconstruction Services satisfactorily completed prior to the effective date of the termination; provided that the District shall be entitled to the right of set off, and the District shall not be required to compensate the Contractor for any profits, overhead or other amounts attributable to any Preconstruction Services that the Contractor might have performed if not for the termination.

Section 6.3 Contractor Termination for Cause. The Contractor may, by written notice to the District, terminate this PSA for cause as provided in this Section, but only if the District fails to cure the cause for termination after notice and opportunity to cure as provided in this Section. If the Contractor determines that cause for termination pursuant to this Section exists, the Contractor may provide written notice of default to the District. The District shall have twenty days after receipt of the notice of default to cure to the Contractor's reasonable satisfaction the cause(s) for termination specified in the notice of default or to make other arrangements satisfactory to the Contractor in its sole discretion. If, within the required time, the District fails to cure the specified cause(s) for termination or make other arrangements satisfactory to the Contractor, the Contractor may provide a notice of termination, which shall be effective immediately. For purposes of this Section, cause for termination will exist only in the following situations: (i) for reasons other than the fault, negligence or willful misconduct of the Contractor or anyone providing services on behalf of the Contractor, the District has suspended the performance of the Preconstruction Services for at least ninety consecutive days and has not within such time provided notice to the Contractor to either resume the Preconstruction Services or to terminate this PSA; (ii) the District has failed, as required by this PSA, to pay or timely pay to the Contractor any substantial undisputed amount(s) due to the Contractor pursuant to this PSA; or (iii) the District has

otherwise breached any of its material obligations pursuant to this PSA and such default has resulted in a direct, substantial and adverse impact on the Contractor. In the event of such termination for cause, the District shall compensate the Contractor for all Preconstruction Services satisfactorily completed prior to the effective date of the termination, and the District shall not be required to compensate the Contractor for any profits, overhead or other amounts attributable to any Preconstruction Services that the Contractor presumably would have performed if not for the termination.

Section 6.4 Additional Termination Provisions. Subject to the other provisions of this Part 6, in the event of any termination of this PSA as provided in this Part 6, the Contractor shall have no claims against the District except with respect to Preconstruction Services performed prior to the effective date of the termination. Within ten days of any termination of this PSA (and regardless of the reason for termination), the Contractor shall provide to the District all spreadsheets, flow-charts, schedules, illustrations, engineering details, and other documents, data and information, of any kind and any format, prepared by or on behalf of the Contractor in connection with the performance of Preconstruction Services, regardless of whether fully or partially complete. If this PSA is terminated in whole or in part as provided herein, the District, in its sole discretion, may contract for or otherwise secure services similar to or in substitution of those terminated.

PART 7: MISCELLANEOUS PROVISIONS

Section 7.1 Incorporation of Recitals and Exhibits. The Recitals set forth on Pages 1 and 2 herein, and the Exhibits referenced herein and attached hereto, are hereby incorporated as operative and effective provisions of this PSA.

Section 7.2 Cooperation. Except as this PSA provides to the contrary, the Parties shall, within ten calendar days of receipt of a written request from the other Party, perform any acts and prepare, sign, deliver, and/or file any documents reasonably required to obtain the goals of, and to satisfy the conditions set forth in, this PSA.

Section 7.3 Time is of the Essence. Time is of the essence of this PSA, and, subject to the Force Majeure provisions of this PSA, all obligations hereunder must be performed or otherwise satisfied within the time periods specified, and any failure of a Party to timely perform or satisfy its obligations pursuant to this PSA shall be deemed to constitute a default by such Party.

Section 7.4 Giving of Notice. Each notice from one Party to the other given pursuant to this PSA must be given in accordance with Section 23.10 of the General Provisions.

Section 7.5 Force Majeure. A Party that is unable to timely perform any particular obligation that it has pursuant to this PSA ("Non-Performing Party") shall not be responsible or liable for delay attributable to such non-performance, nor shall the delay constitute a default or breach by the Non-Performing Party, to the extent the delay is directly attributable to any cause that reasonably is beyond the control of the Non-Performing Party and did not arise in whole or in part from any act contrary to or in violation of this PSA, negligence, or willful misconduct of the Non-Performing Party (each a "Force Majeure Event"). By way of example, not limitation, Force Majeure Events may include: (i) strike or lockout not arising from an act or omission of the Non-Performing Party; (ii) the effect of a rule, order, or other requirement of any governmental or regulatory entity (other than the District) that is imposed after the Effective Date, if the Non-Performing Party reasonably could not have anticipated or known about such requirement in time to preclude the delay in performance; (iii) war or civil disturbance; or (iv) fire, earthquake or other unavoidable casualty that occurs without fault of the Non-Performing

Party. However, a Non-Performing Party shall be excused for the delay in performance of any obligation directly attributable to a Force Majeure Event if, and only if: (i) promptly upon discovering that the Force Majeure Event has occurred, the Non-Performing Party gives notice to the other Party that describes the particulars of such event; (ii) the suspension of the Non-Performing Party's performance is of no greater scope and of no longer duration than is reasonably required to accommodate the Force Majeure Event; (iii) the Non-Performing Party proceeds with reasonable diligence to remedy the delay in its performance and provides reasonable periodic progress reports to the other Party that describes the actions taken to mitigate the effects of such event; and (iv) when the Non-Performing Party is able to resume performance of its obligations under this PSA, it shall give written notice thereof to the other Party. Except as expressly provided in this Section, the occurrence of a Force Majeure Event shall not be deemed or construed to relieve a Party of its obligations pursuant to this PSA. However, in the event of any Force Majeure Event that endangers timely and appropriate completion of the Preconstruction Services, the Parties shall negotiate in good faith, undertake and diligently pursue to completion such actions as may be necessary to preserve the original intent and achieve the goals of this PSA. For avoidance of doubt, in no event shall this Force Majeure provision be deemed or construed to apply to any of the LLB Agreements other than this PSA.

Section 7.6 Entire Agreement. Each Party acknowledges that: (i) neither the other Party, nor its attorneys or agents, has made any promise, representation, or warranty whatsoever that is not set forth herein, whether express or implied, for purposes of inducing the execution of this PSA; and (ii) this PSA has not been executed in reliance upon any promise, representation, or warranty not set forth herein. This PSA sets forth the entire understanding and agreement of the Parties with respect to the Preconstruction Services, and this PSA supersedes all prior negotiations, understandings and agreements with respect to such subject matter, whether written or oral.

Section 7.7 Amendments Must Be In Writing. This PSA may be modified from time to time, but, in each such case, only by means of a written instrument that has been duly approved and signed by both Parties.

Section 7.8 Governing Law and Venue. Notwithstanding any choice-of-law, conflict-of-law, or other provision of any federal, state, or other law or governmental requirement, this PSA shall be governed by, and interpreted and enforced in accordance with, the laws of the State. Each and every arbitration, action, and other proceedings arising from this PSA must be initiated and conducted solely in the County.

Section 7.9 Severability. If a court of competent jurisdiction issues a final ruling or holding that any provision of this PSA is invalid, illegal or otherwise unenforceable, then the remaining provisions of this PSA shall continue in full force and effect, and this PSA shall be construed, to the extent legally possible, to implement the intent underlying the invalid, illegal or unenforceable provision.

Section 7.10 Assignment. Neither Party may assign this PSA or any interest herein, or, except as provided herein, delegate any of its obligations pursuant to this PSA, either directly or by operation of law, without the prior written consent of the other Party, which consent the other Party may deny, condition or delay in its reasonable discretion. Subject to the foregoing, this PSA shall be binding on and inure to the benefit of the successors and duly authorized assignees of the Parties.

Section 7.11 No Third Party Beneficiaries. This PSA shall not be deemed or construed to benefit or provide any right to any third party. The Parties have entered into this PSA solely for their

own benefit, and no third person shall be entitled, directly or indirectly, to base any claim or to have any right arising from, or related to, this PSA.

Section 7.12 Waiver. No waiver of any provision of this PSA shall be effective unless set forth in writing and signed by a duly authorized representative of the Party against whom enforcement of the waiver is sought. No covenant or condition to be performed by a Party pursuant to this PSA can be waived except by the written consent of the other Party. Except as may be expressly provided herein, forbearance or indulgence by a Party in any regard whatsoever shall not constitute a waiver of the covenant or condition at issue. Until complete performance by a Party of a covenant or condition, the other Party shall be entitled to invoke any remedy available to it in accordance with this PSA despite any forbearance or indulgence.

Section 7.13 Interpretation Guides. This PSA shall be deemed to have been prepared by the Parties jointly, and no ambiguity shall be resolved against either Party on the premise that it or its attorneys were responsible for drafting this PSA or any provision herein. The captions and headings set forth herein are for convenience only and in no way establish, define or limit the scope or intent of any Parts, Sections, or other provisions of this PSA. Unless specified otherwise, any reference herein to a Part, Section, or other provision shall be a reference to a provision of this PSA. As used in this PSA, “must” and “shall” shall be interpreted as mandatory, and “may” shall be interpreted as discretionary.

Section 7.14 Counterparts. This PSA may be signed in one or more counterparts, which, taken together, shall constitute one and the same original instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more copies of this PSA containing the signatures of both Parties.

Section 7.15 Due Authority. Each Party hereby represents and warrants that it has all power and authority necessary to execute, deliver, and perform this PSA. Each person who has signed this PSA on behalf of a Party shall be deemed and construed to thereby represent and warrant that he, she, or they has been duly authorized by appropriate action of such Party to sign, and thereby bind such Party to, this PSA. Signatures transmitted by email in PDF or similar format shall be deemed and construed to be valid and binding for all purposes of this PSA.

IN WITNESS WHEREOF, the Parties have executed this PSA as of the Effective Date, as evidenced by the signatures of their respective representatives below.

Solana Beach School District

[Insert Contractor Name]

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Date signed: _____

Date signed: _____

Approved as to Form:

By: Atkinson, Andelson, Loya, Ruud & Romo,
Attorneys for the Solana Beach School District

By: _____
Brian W. Smith, Legal Counsel

District Board Approved: _____, 2022

04-04-22 Version

EXHIBIT "A"
SCOPE OF PRECONSTRUCTION SERVICES

1. Design Documents Review:

- (a) Review design documents in order to:
 - (i) Provide recommendations on site use and improvements, selection of materials, building systems and equipment; and
 - (ii) Provide recommendations as to relative feasibility of construction methods, availability of materials and labor, scheduling and time requirements for procurement, installation and construction of work, and factors relating to cost including, but not limited to, relative cost impacts of alternate designs and materials, preliminary budgets and possible cost reductions that could be achieved through alternate methods or substitutions.
- (b) Prepare value-engineering reports and recommendations that:
 - (i) Detail possible and feasible cost and time savings and/or efficiencies (e.g., those arising from construction processes, specified materials and/or equipment, and other aspects of the design that can be modified to reduce costs and/or the time for achieving final completion, extend life-cycle and/or reduce future maintenance and operations costs, without diminishing intended quality, scope or purposes);
 - (ii) Provide detailed estimates for proposed value-engineering items;
 - (iii) Define the methodology or approaches that maximize value; and
 - (iv) Identify design choices that can be more economically delivered.
- (c) Prepare detailed interdisciplinary constructability reviews that:
 - (i) Ensure that the drawings, specifications, and other construction-related documents are well coordinated;
 - (ii) Identify clashes, deficiencies, and areas of concern regarding the construction-related documents;
 - (iii) Back-check design drawings to confirm required modifications are included; and
 - (iv) Provide the District with written confirmation that:
 - (1) Requirements of the design documents are consistent with and conform to applicable District requirements;
 - (2) All of the various components have been coordinated and are consistent with each other so as to minimize conflicts within or between components of the design documents; and

- (3) The drawings and specifications are sufficiently clear and accurate such that the need for changes during the construction phase will be minimized.
- (d) Confirm Modifications to Design Drawings:
 - (i) If the District accepts any value-engineering and/or constructability review comments, review the design documents as modified to confirm that the value-engineering and/or constructability review comments are properly incorporated.
- (e) Provide Design Documents Review services with the objective of ensuring that the Project can be completed not later than the date specified in the established schedule and for monetary amounts not in excess of the available construction and total Project budgets.

2. As-Built Coordination and Logistics:

- (a) Perform and/or, to the extent applicable, coordinate and oversee services by authorized third-parties performing, the tasks described in this Section 2.
- (b) Create an outline of all areas of the site of the Project for which utility location will be required and review that outline with the District.
- (c) Compile as-built data (including scanning) of electrical, low voltage, water, sewer, gas and storm-drain utilities.
- (d) Formulate electronic files in such AutoCAD, PDF, or other format electronic files as the District may direct ("Electronic Files") using as-built data described above.
- (e) Cause a utility locating firm to verify and map the approximate locations of the utilities.
- (f) Pothole and/or scan critical utility lines and connection-points, including, without limitation, cutting and patching locations.
- (g) Survey and record data, and provide accurate and complete copies of those records to the District.
- (h) Transfer data to the Electronic Files, and provide accurate and complete copies of those files to the District.

3. Construction Cost Estimating:

- (a) Prepare detailed estimates of the total and line-item construction costs, at the following stages of design: (i) 50% construction documents; (ii) DSA submittal phase; and (iii) final (100%) construction documents.
- (b) Update and refine the foregoing estimates periodically as the Architect develops and refines the design documents.
- (c) Advise the District and the Architect in each event that the total construction cost may exceed the budget established by the District and make recommendations for corrective action.

- (d) Provide input to the District and Architect regarding the value of construction, means and methods for construction, duration of construction, and constructability.

4. Construction Scheduling, Phasing and Scoping:

- (a) Investigate, recommend and prepare a schedule for purchase of materials and equipment requiring long lead time procurement.
- (b) Develop and coordinate (and, as necessary, update during the design process) required phasing of the Project and the scopes of work for the various trades required to complete the Project.
- (c) Coordinate the foregoing with the early preparation by the Architect of affected portions of the design and contract documents.
- (d) Prepare preliminary master schedule for construction of the Project that includes and accommodates all of the foregoing.

5. Front-End Document Review and Coordination:

- (a) Review the General Provisions and other “front end” construction documents and ensure design documents are coordinated and consistent with the front end documents.
- (b) Prepare trade packages and coordinate receipt of subcontractor proposals.
- (c) Assist the District with the determination of which subcontractors will require prequalification, and the process of prequalifying a pool of such subcontractors.

6. Guaranteed Maximum Price Determination:

- (a) Prepare, for District review and acceptance, the proposed guaranteed maximum price for completion of all required work and services, including, among other line items, such contingencies and allowances as expressly agreed by the District.

7. Other Duties:

- (a) Make all reasonable efforts to complete the foregoing within such time(s) as will assist in obtaining any and all required approvals for the Project prior to the Required Commencement Date specified in Exhibit A to the CSA.
- (b) Attend and participate in scheduled Project-related planning meetings.
- (c) Upon request of the District, attend and participate in other meetings (District Board meetings and/or workshops, citizen’s oversight committee meetings, community meetings, et cetera) to the extent relating to the Project.

EXHIBIT "B"
COMPENSATION FOR PRECONSTRUCTION SERVICES

- A. **Base Fee:** In exchange for full and satisfactory performance of the Preconstruction Services, the District shall pay to the Contractor a Base Fee in an amount not to exceed \$_____.
- B. **Allocation of Base Fee:** The foregoing Base Fee is hereby allocated to the components of the Preconstruction Services, as described in Exhibit A to this PSA, in the following not-to-exceed amounts:
- (i) \$_____ for Design Documents Review;
 - (ii) \$_____ for As-Built Coordination and Logistics;
 - (iii) \$_____ for Construction Cost Estimating;
 - (iv) \$_____ for Construction Scheduling, Phasing and Scoping;
 - (v) \$_____ for Front-End Document Review and Coordination; and
 - (vi) \$_____ for Guaranteed Maximum Price Determination.