

**FIRST AMENDMENT TO**  
**AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES**

This First Amendment to the Agreement for Construction Management Services (“Amendment”) is entered into as of April 15, 2020, by and between NEFF CONSTRUCTION, INC., a California corporation designated as entity No. C2178118 by the California Secretary of State (“Construction Manager”) and PERRIS UNION HIGH SCHOOL DISTRICT, a California public school district (“District”) related to the construction of the Liberty High School (High School #4) (“Project”). Each the Construction Manager and District may also be referred to herein as a “Party” and collectively, the “Parties.”

**RECITALS**

**WHEREAS**, the Parties entered into an Agreement for Construction Management Services, dated as of September 19, 2018 (“Original Agreement” and as amended by this First Amendment, jointly the “Agreement”); and

**WHEREAS**, the Parties desire to amend the Agreement to include changes in law since its execution and modify the scope of work and fee schedule for Construction Manager’s CM Services to account for a modification to the Project whereby a new pool facility and aquatic center (“Aquatic Center”) will be constructed as part of the Project.

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained herein, the sufficiency of which is acknowledged by both Parties, the Parties hereto hereby agree as follows:

**AGREEMENT**

1. **RECITALS**. The foregoing recitals are true and correct.
2. **DEFINITIONS**. Capitalized terms used in this First Amendment and not otherwise defined herein shall have the meanings set forth in the Original Agreement.
3. **CHANGES TO ORIGINAL AGREEMENT**. The Parties agree to the revisions and amendments as listed below.

- 3.1. Section 2.1 of the Original Agreement is hereby deleted in its entirety, and the following is inserted in its place:

***Independent Contractor.*** The Construction Manager is an independent contractor and shall not be deemed or construed to be an employee, general agent, or general representative of the District. Any limited agent or limited representative status conferred on Construction Manager pursuant to this Agreement shall extend only so far as is reasonably necessary for the Construction Manager to perform its duties and responsibilities pursuant to this Agreement. The personnel performing any

of the CM Services pursuant to this Agreement on behalf of the Construction Manager shall at all times be under the Construction Manager's exclusive direction and control. The Construction Manager shall pay all wages, salaries, and other amounts due to such personnel in connection with their performance of CM Services and as otherwise required by law. The Construction Manager shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers' compensation insurance. District and Construction Manager acknowledge Labor Code section 2750.3 and its potential impact on independent contractor relationships. District and Construction Manager agree that Construction Manager, and any personnel performing any of the CM Services under this Agreement on behalf of the Construction Manager, (a) will remain free from the control and direction of the District in connection with the performance of the CM Services; (b) the scope of work contemplated by this Agreement is outside the usual course of the District's business; and (c) are customarily engaged in an independently established trade, occupation, or business of the same nature as the CM Services performed under this Agreement. Notwithstanding the provisions of Section 2750.3, Construction Manager and the personnel described above desire to maintain independent contractor status in relation to the CM Services provided for the District hereunder. Construction Manager agrees to indemnify the District from any claims of misclassification or otherwise related to Section 2750.3.

4. AQUATIC CENTER SERVICES.

4.1. In addition to those CM Services described in Exhibit A to the Original Agreement, Construction Manager shall provide those services listed in Exhibit A-1, attached hereto and incorporated herein by this reference ("Aquatic Center Services"). The definition of "CM Services" shall now also include the Aquatic Center Services as described in Exhibit A-1.

4.2. The Aquatic Center Services shall be completed in accordance with the terms and conditions of the Original Agreement; provided, however, Construction Manager shall be compensated for the Aquatic Center Services in accordance with Exhibit D-1, attached hereto and incorporated herein by this reference, rather than Exhibit D.

4.3. The fifth sentence of Section 7.2 of the Original Agreement, which reads:

"However, the Pre-construction Payment will be reduced by \$361,250, which reflects a credit in the amount of the pre-construction work that Construction Manager has already completed and been paid for in relation to this Project."

shall not apply to any Pre-construction Payment made by the District to the Construction Manager in relation to the Aquatic Center Services.

5. MISCELLANEOUS.

5.1. This First Amendment shall be governed by the laws of the State of California, County of Riverside.

5.2. Except as otherwise modified by this First Amendment, all terms and conditions of the Original Agreement shall remain in full force and effect, and the Parties do hereby ratify and confirm the Original Agreement as modified hereby.

5.3. This First Amendment shall be binding on each of the Parties and each of their respective successors and assigns.

5.4. This First Amendment may be executed in any number of counterparts, electronic or otherwise, and by the different Parties in separate counterparts, each of which when executed shall be deemed to be an original and all of which, taken together, shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Amendment by their duly authorized officers on the date first above written.

Construction Manager: Neff Construction,      District: Perris Union High School District  
Inc.

By:

\_\_\_\_\_

Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

**EXHIBIT A-1**  
**DESCRIPTION OF AQUATIC CENTER Services**

1. Project Name: Aquatic Center at Liberty High School (High School #4)
2. Project Site Location: Corner of Leon and Wickerd Rd.
3. General Project Scope: CM Services for the construction of the Aquatic Center and all related onsite and offsite improvements per project documents.
4. Construction Delivery Method: Multiple prime contracts administered by Construction Manager in accordance with this Agreement.
5. Construction Contractor: Multiple prime contractors to be determined through competitive bidding.
6. Scheduled Completion Date: August 2021
7. Project Budget: The total budget for the Aquatic Center is approximately Ten Million Dollars (\$10,000,000.00), the estimated construction cost of the Aquatic Center is Eight Million Dollars (\$8,000,000.00).

**EXHIBIT D-1**  
**CONSTRUCTION MANAGER COMPENSATION FOR AQUATIC CENTER**

**Basic CM Fee**

The Basic CM Fee shall consist of two components, as follows:

1. The Basic CM Fee (Trades), which shall be an amount equal to 5% of the total sum of the amounts of Trade Contracts and materials-supply contracts for the Aquatic Center, not including any General Conditions Costs or Reimbursable Costs included in such amounts.
2. The Basic CM Fee (GCs), which (except as determined pursuant to the section below) shall be an amount equal to 4.5% of the General Conditions Costs reasonably and necessarily incurred by the Construction Manager in connection with the Aquatic Center, and which shall be payable in increments based on monthly invoices, submitted to the District in accordance with Section 7.6 herein, each of which must specify the General Conditions Costs incurred in the prior month.

**General Conditions**

For purposes of this Agreement, General Conditions for which the Construction Manager may seek reimbursement, as provided in Section 7.2 herein, are as set forth in this section. Notwithstanding the General Conditions specified in this section, the Construction Manager may seek reimbursement for General Conditions only to the extent applicable to the Aquatic Center. In addition, the Construction Manager shall not self-perform any construction work required to complete the Aquatic Center. Without limiting the obligations of the Construction Manager pursuant to this Agreement, the total reimbursement for General Conditions Costs to which the Construction Manager shall be entitled, shall not exceed the amount of Three Hundred Sixty Thousand Dollars (\$360,000.00).

Job Superintendent	Jobsite Signage
Project Management	Jobsite Security
Project Management Support (main office)	Field Toilets
Project Accountant	Dumpster Rental
Field Office	Temporary Telephone Connection & Usage
Office Supplies	Temporary Water Connection & Usage
Mailing & Courier Costs	Temporary Electric Connection & Usage
Plan Reproduction & Distribution	Temporary Construction Fence Rental
Bidding Advertisement Costs	Temporary Construction Barricade
Insurance	Daily Clean
Safety Management and Oversight	Final Clean
Environmental (SWPPP) Management	Contract Closeout
Scheduling	Remobilization costs following periods of suspension not attributable to acts or omissions of the Construction Manager
Building Information Modeling	

### **Schedule of Hourly Rates**

If compensation to the Construction Manager for Additional CM Services for the Aquatic Center pursuant to Section 7.6 herein, or otherwise as agreed by the Parties, is to be paid, in whole or in part, based on hourly labor rates for the personnel providing the services, the rates shall conform to the following schedule of hourly rates unless and except to the extent the Parties agree otherwise. Such hourly rates shall be deemed and construed to be “all inclusive” compensation to the Construction Manager, including, without limitation, with respect to any and all overhead, profit, payroll taxes, *et cetera*.

#### **Staffing Rates for Additional Services:**

<b>Position</b>	<b>Hourly Rate</b>
Principal In Charge	\$220.00
Project Director	\$220.00
Senior Project Manager	\$190.00
Project Manager	\$150.00
Scheduler	\$150.00
General Superintendent	\$120.00
Project Superintendent	\$120.00
Estimator	\$120.00
Constructability Review	\$120.00
Value Engineering	\$120.00
B.I.M.	\$100.00
Accounting/Billing	\$100.00
Project Assistant	\$85.00
Document Controller	\$70.00
Internet Technology	\$70.00