

## DISTRICT OPTION ASSIGNMENT AGREEMENT

This Assignment Agreement is valid as of \_\_\_\_\_ (the "Effective Date") by and between the **Mother Lode Union School District** (the "District"), **Landmark Construction Management Services** ("Construction Manager"), \_\_\_\_\_ ("Trade Contractor") and \_\_\_\_\_ (the "Trade Contractor's Surety"), collectively the "Parties." This Assignment Agreement amends, restates, replaces and supplements certain aspects of the Trade Contract entered into by and between the District and Trade Contractor for work on **Bid Number 17-002** for the **Improvements to Herbert Green MS** (the "Project") and the Parties agree and consent to the following recitals, terms and conditions:

**WHEREAS**, the District and Construction Manager entered into a Construction Management Services Master and Project Directive Agreement on \_\_\_\_\_, 2017 for the completion of the Project;

**WHEREAS**, the District then entered into a Trade Contract with Trade Contractor on \_\_\_\_\_, 2017;

**WHEREAS**, the District and the Trade Contractor desire to modify the Trade Contract, as set forth herein;

**WHEREAS**, the District desires to assign to Construction Manager, and Construction Manager desires to accept the assignment of the Trade Contract and the rights and benefits associated therewith, and the Trade Contractor agrees with and does not object to the assignment;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

### **ARTICLE 1 AGREEMENT**

1.1. The Parties mutually agree to, and do hereby, modify the Trade Contract as of the Effective Date. The Parties acknowledge and agree that:

A. Pursuant to the Construction Management Services Master and Project Directive Agreement between the District and Construction Manager, the District's Trade Contract with Trade Contractor is assigned by the District to Construction Manager and Construction Manager accepts the assignment of the Trade Contract as an agent of District.

B. Pursuant to Article 11 of the Agreement between the District and Trade Contractor, the Trade Contract may be assigned by the District to Construction Manager and Trade Contractor consents to the assignment of the Trade Contract.

C. All rights and obligations the District has under the Trade Contract are hereby transferred to the Construction Manager as of the Effective Date, except for responsibility for the Project design, payments to Trade Contractor, and/or direct actions of District and third parties on the Project.

D. All references and meaning to the word “District” or “Owner” in the Trade Contract shall remain the same, and therefore, “District” shall refer to the MOTHER LODE UNION SCHOOL DISTRICT, with all of the corresponding rights, obligations and benefits thereof.

E. All references to the word “District” or “Owner” in the Trade Contract shall be replaced with the word “Construction Manager” with all of the respective rights, obligations and benefits resulting therefrom.

F. Trade Contractor acknowledges and accepts all of the terms of this Assignment Agreement and agrees to be bound accordingly.

G. The Parties acknowledge and agree that Construction Manager will accept this assignment and shall administer the Trade Contract as an agent of the District. The District and Construction Manager intend by this assignment that all third parties who enter into a contractual undertaking relating to the Project will view and treat Construction Manager as the construction manager of the Project, and not an owner. Further, Construction Manager will not be responsible for the design of the Project, will not be assigned any contracts between District and design professionals, and Construction Manager assumes no warranties, express or implied, as to the sufficiency of the Drawings, Specifications or any other design documents or as to the accuracy or quality of the construction work other than those standards and actions required of Construction Manager under this assignment.

1.2. Said assignment contemplated herein notwithstanding, the District and Construction Manager shall continue to be bound by and agree to comply fully with their obligations under the Construction Management Services Master and Project Directive Agreement, and with any other term or provision imposing an obligation on the District and Construction Manager under the Construction Management Services Master and Project Directive Agreement.

1.3. Notwithstanding the Parties’ desire, intent and agreement to modify the Trade Contract through this Assignment Agreement, should the District, in its sole discretion, wish to cancel, void and/or terminate this Assignment Agreement at any future time, the District may do so by providing written notice to the Construction Manager and Trade Contractor. In such an event, simultaneously, upon communication of written notice, this Assignment Agreement shall be deemed canceled, voided and/or terminated and the District and Construction Manager shall look solely to and be bound by the original terms of the Construction Management (At-Risk) Services Agreement and District and Trade Contractor shall look solely to and be bound by the Trade Contract. If this Assignment Agreement is determined by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy,

the Construction Management Services Master and Project Directive Agreement and the Trade Contract shall nevertheless remain in full force and effect.

## **ARTICLE 2 REPRESENTATIONS AND WARRANTIES**

2.1. Construction Manager represents and warrants to the District that is a limited liability company duly organized, in good standing and validly existing under the laws of the State of Delaware, and that the execution, delivery and performance of this Assignment Agreement by Construction Manager has been duly authorized.

2.2. The District represents and warrants to Construction Manager and Trade Contractor that the District is duly organized and in good standing and validly existing under the laws of the State of California. The execution, delivery and performance of this Assignment Agreement by the District has been duly authorized.

## **ARTICLE 3 MISCELLANEOUS**

3.1. Entire Agreement. This Assignment Agreement and any Exhibits attached hereto constitute the entire agreement between the Parties with respect to the subject matter hereof and shall supersede all prior written and oral and all contemporaneous oral agreements and understandings with respect to the subject matter hereof.

3.2. Governing Law. This Assignment Agreement shall be construed in accordance with and governed by the laws of the State of California.

3.3. Notices. Notices, offers, requests or other communications required to be given by one party pursuant to the terms of this Assignment Agreement shall be given in writing to the other respective Parties.

3.4. Counterparts. This Assignment Agreement, and the other documents referred to herein or therein, may be executed in counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

3.5. Binding Effect; Assignment. This Assignment Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective legal representatives and successors, and nothing in this Assignment Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Assignment Agreement. No party may assign this Assignment Agreement or any rights or obligations hereunder, without the prior written consent of the other Parties, and any such assignment shall be void; provided, however, each party may assign this Assignment Agreement to a successor entity in conjunction with such party's reincorporation.

3.6. Severability. If any term or other provision of this Assignment Agreement is determined by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Assignment Agreement shall nevertheless, remain in full force and effect.

3.7. Authority. The Parties hereto represents to the other that: (a) it has the corporate or other requisite power and authority to execute, deliver and perform this Assignment Agreement, (b) the execution, delivery and performance of this Assignment Agreement by it have been duly authorized by all necessary corporate or other actions, (c) it has duly and validly executed and delivered this Assignment Agreement, and (d) this Assignment Agreement is a legal, valid and binding obligation, enforceable against it in accordance with its terms.

3.8. Interpretation. The headings contained in this Assignment Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Assignment Agreement. Any capitalized term used but not otherwise defined therein, shall have the meaning assigned to such term in this Assignment Agreement.

**WHEREFORE**, the Parties have signed this Assignment Agreement effective as of the date first set forth above.

**CONSTRUCTION MANAGER**

BY: \_\_\_\_\_

\_\_\_\_\_  
Print Name

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

**DISTRICT**

BY: \_\_\_\_\_

\_\_\_\_\_  
Print Name

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

**TRADE CONTRACTOR**

BY: \_\_\_\_\_

\_\_\_\_\_  
Print Name

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

**TRADE CONTRACTOR'S SURETY**

BY: \_\_\_\_\_

\_\_\_\_\_  
Print Name

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_