

**AMENDMENT NO. 1 TO CONSTRUCTION SERVICES AGREEMENT FOR CASTAIC
HIGH SCHOOL PROJECT BY AND BETWEEN THE WILLIAM S. HART UNION
HIGH SCHOOL DISTRICT AND CASTAIC HS CONSTRUCTION, INC.**

THIS AMENDMENT NO. 1 TO CONSTRUCTION SERVICES AGREEMENT FOR CASTAIC HIGH SCHOOL PROJECT BY AND BETWEEN THE WILLIAM S. HART UNION HIGH SCHOOL DISTRICT AND CASTAIC HS CONSTRUCTION, INC. ("Amendment") is made and entered into this 27th day of January, 2020 ("Effective Date"), by and between the William S. Hart Union High School District ("District") and Castaic HS Construction, Inc. ("Contractor"). The District and Contractor may be referred to herein individually as "Party" and/or collectively as the "Parties."

RECITALS

A. On October 19, 2016, the Parties executed a Construction Services Agreement for Castaic High School Project ("CSA"). The CSA is one of three concurrently executed contracts required to construct Castaic High School ("School") under the lease-leaseback construction delivery method authorized by Education Code section 17406.

B. Of the three contracts, the CSA governs the terms and conditions for building the high school and establishes the Guaranteed Maximum Price ("GMP") for which the Contractor will construct Castaic High School.

C. While construction is not complete, Castaic High School opened on or about August 13, 2019.

D. The Parties are now engaging in discussions regarding a dispute related to delays, owner-directed changes to the Work, and other potential acceleration costs. The Contractor has requested a change order under the CSA to increase the GMP.

E. The District recognizes that some additional, undetermined amount may be appropriate for an increase in the GMP. In order to avoid a dispute while Contractor's change order request is being reviewed, the District and Contractor desire to enter into this Amendment.

NOW THEREFORE, the Parties agree as follows:

1. The Recitals set forth in this Amendment are true and correct and are hereby incorporated into this Amendment. Additionally, all capitalized words/phrases not defined herein shall have the same meaning or definition given to them in the CSA or other appropriate contract governing the Castaic High School construction project.

2. In light of certain actions that required the Contractor to accelerate its construction services and to forego certain allotted Rain Days, as well as certain District-directed changes to the Work relating to Building 700 (such acceleration costs and District-directed changes are collectively herein the "Costs"), the District shall increase the GMP. Based on the foregoing, Section 6(a) of the CSA and Exhibit "E" attached to the CSA are hereby amended in that the District agrees to increase the GMP in the amount of one million, four hundred thousand

dollars (\$1,400,000) to be distributed in two monthly installments of \$700,000 each. The first installment is contingent upon submission of complete documentation of alleged cost increases by the Contractor; the second installment is contingent upon submission of a detailed schedule delay analysis provided by the Contractor.

3. With the exception of the above-specified increase in the GMP approved by this Amendment, the District does not accept, approve, or admit any fault, claim, allegation, responsibility, or liability for any additional amounts set forth in the change order request or otherwise claimed to be due regarding Castaic High School. Nothing in this Amendment shall be construed as an acceptance or admission of any such fault claim, allegation, responsibility, or liability.

4. Prior to execution and delivery of this Amendment, each Party has received, or had unqualified opportunities to receive, independent legal advice from its legal counsel with respect to the advisability of executing this Amendment and the meaning of the provisions herein. Therefore, the provisions of this Amendment shall be construed based on their fair and reasonable meaning, and not for or against any Party based on whether such Party or its legal counsel was primarily responsible for drafting this Amendment or any particular provision herein.

5. This Amendment constitutes the entire understanding and agreement between the Parties pertaining to the rights and obligations described in this Amendment. All prior and contemporaneous agreements, representations and understandings of the Parties relating to such subject matter, whether oral or written, are hereby superseded and replaced by this Amendment.

6. A waiver by a Party of any provision of this Amendment shall be binding only if the waiver is set forth in writing and has been duly approved and signed by the waiving Party. Unless so specified in the written waiver, a waiver by a Party of any provision of this Amendment shall not constitute a waiver of any other provision(s) herein, similar or not, and shall not be construed as a continuing waiver. Except as waived in accordance with this Section, neither the failure by a Party at any time to require performance of any requirement of this Amendment, nor any forbearance or indulgence of the Party in regard to such requirement, shall in any manner affect the Party's right at a later time to enforce the same or any other provision of this Amendment.

7. If a court of competent jurisdiction determines, for any reason, that any provision or requirement of this Amendment is invalid or unenforceable, such determination shall not invalidate or render unenforceable any other provision or requirement of this Amendment. In such event, the provisions and requirements that are not the subject of the court's determination shall be interpreted, to the extent permitted by law, in a manner that is consistent with the intent and purpose underlying the invalid or unenforceable provision or requirement. Likewise, if a court of competent jurisdiction determines, for any reason, that any provision or requirement of this Amendment is invalid or unenforceable as applied to a specific person or entity, such determination shall not affect the applicability of such provision or requirement to other persons or entities. In such event, the provisions and requirements that are not the subject of the court's determination shall be interpreted, to the extent permitted by law, in a manner that is consistent with the intent and purpose underlying the inapplicable provision or requirement.

8. The Parties have entered into this Amendment solely for their own purposes, and this Amendment shall not be deemed or construed to: (i) benefit any third party; (ii) create any right for any third party; or (iii) except as provided by law, provide a basis for any claim, demand, action, or other proceeding by any third party.

9. Notwithstanding anything to the contrary: (i) nothing in this Amendment shall be deemed or construed to constitute confidential information; and (ii) this Amendment is a public record which the District may disclose in accordance with State law or otherwise.

10. This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more copies of this Amendment having original signatures of both Parties.

11. The persons executing this Amendment on behalf of the District and Contractor are duly authorized to execute this Amendment.

12. Except as expressly provided herein, the remaining provisions of the CSA shall remain in full force and effect.

IN WITNESS OF THE FOREGOING, the undersigned execute this Amendment on behalf of the Parties.

**WILLIAM S. HART UNION HIGH SCHOOL
DISTRICT**

Date: 1/27, 2020

By: Vicki Engbrecht
Vicki Engbrecht
Superintendent

CASTAIC HS CONSTRUCTION, INC.

Date: 1/27, 2020

By: Larry Rasmussen
Larry Rasmussen
President