"MASTER" AGREEMENT
FOR
CONSTRUCTION MANAGEMENT SERVICES
BETWEEN
SAN FRANCISCO UNIFIED SCHOOL DISTRICT
AND
_____

FOR
2016 MEASURE A BOND PROJECTS

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DRAFT

AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

This Agreement for Construction Management Services ("Agreement") is made as of the ____ day of _____, 2016, between the **San Francisco Unified School District** ("District") and_____ ("Construction Manager") (individually a "Party," and collectively the "Parties"), for the construction management and administration of independent construction projects as part of the District's 2016 Measure A Bond Program ("Program").

RECITALS

WHEREAS, Construction Manager has experience and established capability in public works construction management,
WHEREAS, The District desires that the Construction Manager render professional services to assist in the management of the 2016 Measure A Bond Program,
WHEREAS, represents itself able and, for a consideration, is willing to perform the services required by the District.

That for and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

Article 1. Definitions

1.1. In addition to the definitions above, the following definitions for words or phrases shall apply when used in this Agreement, including all Exhibits:

1.1.1. **Agreement**: The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.

1.1.2. **Architect**: The architect(s) that the District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s). The Architect is a member of the Design Team.

1.1.3. **Construction Manager**: The entity listed in the first paragraph of this Agreement, including all Consultant(s) to the Construction Manager.

1.1.4. **Construction Budget**: The total amount indicated by the District for the Project plus all other costs, including design, construction, administration, financing, and all other costs.

1.1.5. **Construction Cost Budget**: The total cost to District of all elements of the Project designed or specified by the Design Team, as adjusted at the end of each design phase in accordance with this Agreement. The Construction Cost Budget does not include the compensation of the PPDM, the Design Team, the Construction Manager, the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District.

1.1.6. **Consultant(s)**: Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Construction Manager.

1.1.7. **Design Team**: The architect(s), engineer(s), and other designer(s)

that the District designates as designing all or a portion of the Project, including all consultants to the architect(s), engineer(s) or other designer(s), who have a responsibility to the District to design all or a portion of the Project either directly or as a sub-consultant or subcontractor.

1.1.8. **District**: The San Francisco Unified School District.

1.1.9. **DSA**: The Division of the State Architect.

1.1.10. **Extra Services**: Extra Services are defined in Article 7 and **Exhibit "B."**

1.1.11. **Fee**: The Construction Manager's Fee is defined herein, payable as set forth herein and in **Exhibit "D."**

1.1.12. **PPDM**: The Program, Project, Design Manager ("PPDM") hired to perform design related management services under for the District, including all Consultant(s) to the Bond Program. If no PPDM is hired by the District for the Project(s), then all references to "PPDM" shall be read and interpreted as the District.

1.1.13. **Project**: Individual Project assigned at District's to Construction Manager by way of addenda to this Master Agreement.

1.1.14. **Project Design Team**: Consists of District Project Manager, Architect of Record, PPDM and Construction Manager.

1.1.15. **Service(s)**: All labor, materials, supervision, services, tasks, and work that the Construction Manager is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of the Project.

Article 2. Scope, Responsibilities and Services of Construction Manager

2.1. **Scope**: Construction Manager shall provide the Services described herein and under **Exhibit "A"** for the Project. The parties agree that the Construction Manager's Services described herein are based on a design-bid-build construction manager / general contractor structure on the Project(s). The District reserves the right to change this structure including, without limitation, utilizing a construction manager / multiple-prime structure, a design-build structure, or a lease-leaseback structure, each of which the Parties agree may require the Construction Manager's Fee and Scope as well as certain terms and conditions of this Agreement to be adjusted by an amendment, in writing and signed by both Parties.

2.2. **Coordination**: In the performance of Construction Manager's services under this Agreement, Construction Manager agrees that it will maintain such coordination with District personnel and/or its designated representatives, specifically including but not limited to District's PPDM, as may be requested and desirable. This shall include, without limitation, coordination with all members of the District's Design Team, and the persons responsible for operation of the District's Labor Compliance Program, if any. If the Construction Manager employs Consultant(s), the Construction Manager shall ensure that its contract(s) with its Consultant(s) include language notifying the Consultant(s) of the District's Labor Compliance Program, if any.

2.3. **Construction Manager's Services**: Construction Manager shall act as the District's agent to render the Services and furnish the work as described in **Exhibit "A,"** which will commence upon the receipt of a Notice to Proceed signed by the District representative. Construction Manager's services will be completed in accordance with the schedule attached as **Exhibit "C."**

2.4. **Schedule of Work:** The Construction Manager shall commence work under this Agreement upon receipt of a Notice to Proceed, and shall prosecute the work diligently as described in **Exhibit "A"** in accordance with the schedule attached as **Exhibit "C."** Time is of the essence and failure of Construction Manager to perform work on time as specified in this Agreement is a material breach of this Agreement.

2.5. **Construction Cost Budget:** The Construction Manager shall have responsibility to develop, review, and reconcile the Construction Cost Budget with the Design Team, PPDM and the District at milestone points as described in **Exhibit "A"** throughout construction.

2.5.1. The Construction Cost Budget shall be the total cost to District of all elements of the Project designed or specified by the Project design professional(s). The Construction Cost Budget does not include the compensation of the Construction Manager, the Project design professional(s), sub-consultants, the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District.

2.5.2. Reconciliation of the District's Construction Budget, and preliminary and detailed cost estimates collaboratively prepared by the Architect, PPDM and Construction Manager, represent the Construction Manager's best judgment as a professional familiar with the construction industry.

Article 3. Construction Manager Staff

3.1. The Construction Manager has been selected to perform the Services herein because of the skills and expertise of key individuals.

3.2. The Construction Manager agrees that the following key people in Construction Manager's firm shall be associated with the Project in the following capacities:

EXAMPLE:

Executive-in-Charge: ___
Project Director: ___
Project Manager: ___
Principal-in-Charge: ___
President: ___
Executive Vice President: ___
Scheduler: ___
Estimator: ___

3.3. The Construction Manager shall not change any of the key personnel listed above without prior written approval by District, unless said personnel cease to be employed by Construction Manager. In either case, District shall be allowed to interview and approve replacement personnel.

3.4. If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice the Construction Manager shall immediately remove that person from the Project and provide a temporary replacement. Construction Manager shall within seven (7) days provide a permanent replacement person acceptable to the District. All lead or key personnel for any Consultant must also be designated by the consultant and are subject to all conditions previously stated in this paragraph.

3.5. Construction Manager represents that the Construction Manager has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of services required under this Agreement and that no person having any such interest shall be employed by Construction Manager.

Article 4. Fee and Method of Payment

4.1. District shall pay Construction Manager:

A not-to-exceed amount equal to $_____for all services contracted for under this Agreement and based on the Fee Schedule attached to **Exhibit "D."**

4.2. District shall pay Construction Manager the Fee pursuant to the provisions herein and in **Exhibit "D**."

4.3. No increase in Fee will be due from change orders generated during the construction period to the extent caused by Construction Manager's error.

4.4. The Construction Manager's fee ("Fee") set forth in this Agreement shall be full compensation for all of Construction Manager's Services incurred in the performance hereof as indicated in **Exhibit "D"**, including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Project location, offices, per diem expenses, printing, providing, or shipping of deliverables in the quantities set forth in **Exhibit "A."**

Article 5. Payment for Extra Services

5.1. District-authorized Services outside of the scope in **Exhibit "A**" or District-authorized reimbursables not included in Construction Manager's Fee are "Extra Services." Any charges for Extra Services shall be paid by the District as described in **Exhibit "B**" only upon certification that the claimed Extra Services were authorized in writing in advance by the District and that the Extra Services have been satisfactorily completed.

5.2. A written proposal describing the proposed scope of services and listing the personnel, labor duration, rates, and cost shall be submitted by the Construction Manager to the District for written approval before proceeding

with any Extra Services.

Article 6. Ownership of Data

After completion of the Project or after termination of this Agreement, Construction Manager shall deliver to District a complete set of Project records, including without limitation all documents generated by Construction Manager, copies of all documents exchanged with or copied to or from all other Project participants, and all closeout documents. Project records shall be indexed and appropriately organized for easy use by District personnel. All Project records are property of the District, whether or not those records are in the Construction Manager's possession.

Article 7. Termination of Agreement

7.1. If Construction Manager fails to perform Construction Manager's duties to the satisfaction of the District, or if Construction Manager fails to fulfill in a timely and professional manner Construction Manager's material obligations under this Agreement, or if Construction Manager violates any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement effective immediately upon the District giving written notice thereof to the Construction Manager. In the event of a termination pursuant to this subdivision, Construction Manager may invoice District for all work performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of Construction Manager's actions, errors, or omissions that caused the District to terminate the Construction Manager.

7.2. District shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Construction Manager may invoice District and District shall pay all undisputed invoice(s) for work performed until the notice of termination. This shall be the only amount(s) potentially owing to Construction Manager's if there is a termination for convenience.

7.3. The Construction Manager has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement and fails to cure such material default within sixty (60) days, or if the default cannot be cured within sixty (60) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from Construction Manager. Such termination shall be effective after receipt of written notice from Construction Manager to the District.

7.4. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.

7.5. If, at any time in the progress of the Project, the governing board of the District determines that the Project should be terminated, the Construction Manager, upon written notice from the District of such termination, shall immediately cease work on the Project. The District shall pay the Construction Manager only the Fee associated with the Services provided,

since the last invoice that has been paid and up to the notice of termination.

7.6. If the Project is suspended by the District for more than one hundred and eighty (180) consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the schedule shall be adjusted and the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Construction Manager's services. Upon resumption of the Project after suspension, the Construction Manager will take all reasonable efforts to maintain the same Project personnel.

Article 8. Indemnity

8.1. Construction Manager shall indemnify, protect, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, members, and volunteers ("Indemnified Parties") from any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney's and consultants' fees and causes of action, including personal injury and/or death ("Claim(s)"), to the extent that the Claim(s) arises out of, pertains to, or relates to the negligence (active or passive, ordinary or gross), recklessness (ordinary or gross), errors or omissions, or willful misconduct of Construction Manager, its directors, officials, officers, employees, contractors, subcontractors, consultants, sub consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. This indemnity excludes Construction Manager's liability as to the active or sole negligence or willful misconduct of the District.

8.2. Construction Manager shall defend and pay all costs, expenses and fees to defend the Indemnified Parties, from any and all Claim(s), to the extent that the Claim(s) arises out of, pertains to, or relates to the alleged negligence (active or passive, ordinary or gross), recklessness (ordinary or gross), errors or omissions, or willful misconduct of Construction Manager, its directors, officials, officers, employees, contractors, subcontractors, consultants, sub consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. District shall have the right to accept or reject any legal representation that Construction Manager proposes to defend the Indemnified Parties.

Article 9. Safety / Security

9.1. Unless the District has determined pursuant to Education Code section 45125.2 that on the basis of scope of work in this Agreement that Construction Manager and its subcontractors and employees will have only limited contact with pupils, the Construction Manager shall comply with the provisions of Education Code section 45125.01 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Construction Manager shall not permit any employee to have any contact with

District pupils until such time as the Construction Manager has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Construction Manager's responsibility shall extend to all employees, agents, and employees or agents of its subcontracts regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Construction Manager. Verification of compliance with this section and the Criminal Background Investigation Certification (**Exhibit "E"**) shall be provided in writing to the District prior to each individual's commencement of employment or participation on the Project and prior to permitting contact with any student.

9.2. No drugs, alcohol, and/or smoking of any kind are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, or contractors are to use drugs on these sites.

9.3. Unacceptable and/or loud language will not be tolerated. In appropriate comments "cat calls" or other derogatory language toward students or public will not be allowed.

Article 10. Responsibilities of the District

10.1. The District shall examine the documents submitted by the Construction Manager and shall render decisions so as to avoid unreasonable delay in the process of the Construction Manager's services.

10.2. The District shall provide to the Construction Manager complete information regarding the District's requirements for the Project.

10.3. The District shall retain design professional(s) whose services, duties and responsibilities shall be described in written agreement(s) between the District and design professional(s).

10.4. The District shall, in a timely manner, and with Construction Manager's assistance, secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, subject to Construction Manager's and/or the design professional(s) duties to recommend or provide same.

10.5. The District, its representatives, and consultants shall communicate with the contractor either directly or through the Construction Manager.

10.6. During the Construction Phase of the Project, the District may require that the contractors submit all notices and communication relating to the Project directly to the Construction Manager.

10.7. The District shall designate an officer, employee, and/or other authorized representatives to act on the District's behalf with respect to the Project. The District's representative for the Project shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

Article 11. Liability of District

11.1. Other than as provided in this Agreement, District's obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

11.2. Any and all costs incurred by District, or for which District may become liable, to the extent caused by negligent delays of Construction Manager in its performance hereunder, shall be paid to District by Construction Manager as provided for herein and/or under California law.

11.3. District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Construction Manager, or by its employees, even though such equipment be furnished or loaned to Construction Manager by District.

11.4. The Construction Manager hereby waives any and all claim(s) for recovery from the District under this Agreement, which loss or damage is covered by valid and collectible insurance policies. Construction Manager agrees to have its required insurance policies endorsed to prevent the invalidation of insurance coverage by reason of this waiver. This waiver shall extend to claims paid, or expenses incurred, by Construction Manager's insurance company on behalf of the District.

Article 12. Insurance

12.1. Construction Manager shall procure prior to commencement of the work of this Agreement and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Construction Manager, their agents, representatives, employees and Consultant(s).

12.2. **Minimum Scope and limits of Insurance**: Coverage shall be at least as broad as the following scopes and limits:

12.2.1. **Commercial General Liability.** Two million dollars ($2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a 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.

12.2.2. **Commercial Automobile Liability, Any Auto**. One million dollars ($1,000,000) per accident for bodily injury and property damage.

12.2.3. **Workers' Compensation**. Statutory limits required by the

State of California and

12.2.4. **Employer's Liability**. One million dollars ($1,000,000) per accident for bodily injury or disease.

12.2.5. **Professional Liability**. This insurance shall cover the Construction Manager and his/her Consultant(s) for two million dollars ($2,000,000) aggregate limit subject to no more than twenty-five thousand dollars ($25,000) per claim deductible, coverage to continue through completion of construction plus two years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.

12.2.6. **Pollution Legal Liability.** Legal Liability coverage for bodily injury, property damage, environmental damage, emergency response expense, claim expense and business interruption costs caused by pollution incidents arising from Consultant's performance of any portion of the Services. One million dollars ($1,000,000) per occurrence. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.

12.3. The District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.

12.4. **Deductibles and Self-Insured Retention**: Any deductibles or self-insured retention exceeding $25,000 must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers; or the Construction Manager shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

12.5. **Other Insurance Provisions**: The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

12.5.1. All policies except for the professional insurance policy shall be written on an occurrence form.

12.5.2. The District, the Construction Manager, their representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Construction Manager; instruments of service and completed operations of the Construction Manager; premises owned, occupied or used by the Construction Manager; or automobiles owned, leased, hired or borrowed by the Construction Manager. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

12.5.3. For any claims related to this Project, the Construction Manager's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Construction Manager's insurance and shall not contribute with it.

12.5.4. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

12.5.5. The Construction Manager's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

12.5.6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

12.6. **Acceptability of Insurers**: Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A:VII.

12.7. **Verification of Coverage**: Construction Manager shall furnish the District with:

12.7.1. Certificates of insurance showing maintenance of the required insurance coverage;

12.7.2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before work commences.

Article 13. Nondiscrimination

Construction Manager agrees that no discrimination shall be made in the employment of persons under this Agreement because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of such person. Construction Manager shall comply with any and all regulations and laws governing nondiscrimination in employment.

Article 14. Covenant Against Contingent Fees

Construction Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Construction Manager, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide

employee working solely for the Construction Manager, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage fee, gift, or contingency.

Article 15. Entire Agreement / Modification

This Agreement, including the Exhibits hereto, supersedes all previous contracts and constitutes the entire understanding of the parties hereto. Construction Manager shall be entitled to no other benefits than those specified herein. No changes, amendments, or alterations shall be effective unless in writing and signed by both Parties. Construction Manager specifically acknowledges that in entering this Agreement, Construction Manager relies solely upon the provisions contained in this Agreement and no others.

Article 16. Non-Assignment of Agreement

In as much as this Agreement is intended to secure the specialized services of the Construction Manager, Construction Manager may not assign, transfer, delegate or sublet any interest therein without the prior written consent of District and any such assignment, transfer, delegation or sublease without the District's prior written consent shall be considered null and void. Likewise, District may not assign, transfer, delegate, or sublet any interest therein without the prior written consent of Construction Manager and any such assignment, transfer, delegation or sublease without Construction Manager's prior written consent shall be considered null and void.

Article 17. Law, Venue

17.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.

17.2. The county in which the District administration office is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

Article 18. Alternative Dispute Resolution

All claims, disputes, or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. If this method proves unsuccessful, then all claims, disputes or controversies as stated above may be decided through arbitration, if agreed to by all Parties.

Article 19. Severability

If any term, covenant, condition, or provision of this Agreement is held by a

court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

Article 20. Employment Status

20.1. Construction Manager shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which the Construction Manager performs the services which are the subject matter of this Agreement; provided always, however, that the services to be provided by Construction Manager shall be in a manner consistent with all applicable standards and regulations governing such services.

20.2. Construction Manager understands and agrees that the Construction Manager's personnel are not and will not be eligible for membership in or any benefits from any District group plan for hospital, surgical or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a District employee.

20.3. Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Construction Manager is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Construction Manager which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.

20.4. Should a relevant taxing authority determine a liability for past services performed by Construction Manager for District, upon notification of such fact by District, Construction Manager shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Construction Manager under this Agreement (and offsetting any amounts already paid by Construction Manager which can be applied as a credit against such liability).

20.5. A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Construction Manager shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Construction Manager is an employee for any other purpose, then Construction Manager agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Construction Manager was not an employee.

20.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 21. Warranty of Construction Manager

21.1. Construction Manager warrants, as applicable, that it is properly licensed and/or certified under the laws and regulations of the State of California to provide all the services that it has herein agreed to perform.

21.2. Construction Manager certifies that it is aware of the provisions of the Labor Code of the State of California, that require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with those provisions before commencing the performance of the work of this Agreement.

21.3. Construction Manager certifies that it is aware of the provisions of California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Since the Construction Manager is performing work as part of an applicable "public works" or "maintenance" project, and since the total compensation is One Thousand Dollars ($1,000) or more, the Construction Manager agrees to fully comply with and to require its Consultant(s) to fully comply with all applicable prevailing wage requirements of the California Labor Code.

Article 22. Cost Disclosure - Documents and Written Reports

Construction Manager shall be responsible for compliance with California Government Code section 7550, if the total cost of the Agreement is over Five Thousand Dollars ($5,000).

Article 23. Communications / Notice

Notices and communications between the Parties may be sent to the following addresses:

District	Construction Manager

The Parties, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

Article 24. Disabled Veteran Business Enterprise Participation

Pursuant to section 17076.11 of the Education Code, the District has a participation goal for disabled veteran business enterprises (DVBEs) of at least three percent (3%), per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board

pursuant to the Leroy F. Greene School Facilities Act (the Act). This Project may use funds allocated under the Act. Therefore, to the extent feasible, the Construction Manager shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBEs in conjunction with the contract, and documentation demonstrating the Construction Manager's good faith efforts to meet these goals.

Article 25. Other Provisions

25.1. The Construction Manager shall be responsible for the cost of construction change orders caused directly by the Construction Manager's willful misconduct or negligent acts, errors or omissions. Without limiting Construction Manager's liability for indirect or consequential cost impacts, the direct costs for which the Construction Manager shall be liable shall equal its proportionate share of the difference between the cost of the change order and the reasonable cost of the work had such work been a part of the originally prepared construction documents.

25.2. Neither the District's review, approval of, nor payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Construction Manager shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Construction Manager's failure to perform any of the services furnished under this Agreement to the standard of care of the Construction Manager for its Services, which shall be, at a minimum, the standard of care of construction managers performing similar work for California school districts at or around the same time and in or around the same geographic area of the District.

25.3. Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date(s) indicated below.

Dated: _____, 201	Dated: _____, 201
San Francisco Unified School District	_____
By: _____	By: _____
Print Name: _____	Print Name: _____
Print Title: _____	Print Title: _____

EXHIBIT "A"
RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER

Construction Manager shall provide professional services necessary for completing the following:

1. BASIC SERVICES

1.1. Provide work which shall comply with professional standards and applicable requirements of federal, state, and local law.

1.2. Advise the District as to the regulatory agencies that have jurisdiction over the Project, and as to coordination with and implementation of the requirements of the regulatory agencies, including without limitation the Division of the State Architect and the Office of Public School Construction.

1.3. Contract for or employ, at Construction Manager's expense, Consultant(s) to the extent deemed necessary for Construction Manager's services. Nothing in the foregoing shall create any contractual relationship between the District and any Consultant(s) employed by the Construction Manager under terms of this Agreement.

1.4. Cooperate with other professionals employed by the District for the design, coordination or management of other work related to the Project.

1.5. Chair, conduct and take minutes of periodic meetings between District and its design professional(s) of the Site Committee meetings, and of construction meetings during the course of the projects. Construction Manager shall invite, via emailed meeting invitation the District and/or its representative to participate in these meetings. Construction Manager shall prepare and keep within 3 days of each meeting, meeting minutes to document comments generated in these meetings, but shall not be responsible for analyzing design issues raised in said meetings.

1.6. Be responsible for the professional quality and technical accuracy of all cost estimates, constructability reviews, back-checking reviews, studies, reports, projections, opinions of the probable cost of construction, and other services furnished by Construction Manager under this Agreement as well as coordination with all Master Plans, studies, reports and other information provided by District to Construction Manager. Construction Manager shall, without additional compensation, correct or revise any errors or omissions in the deliverables it generates.

1.7. Maintain a log of all meetings, site visits or discussions held in conjunction with the work of this Project, with documentation of major discussion points, observations, decisions, questions or comments. These shall be furnished to the District and/or its representative for inclusion in the overall Project documentation.

1.8. At the request of the District, utilize a Management Information System (MIS) to assist in establishing communications between the District, Construction Manager, design professional(s), contractor(s) and other parties on the

Project. Construction Manager shall interview the District's key personnel and others in order to determine the type of information to be managed and reported, the reporting format, the desired frequency for distribution of the various reports, the degree of accessibility by potential users, and the security protocol for the system.

1.9. Coordinate transmittal of documents to regulatory agencies (PG&E, SFPUC, etc.) for review and advise the District of potential problems in completion of such reviews.

1.10. Provide and maintain a management team, acceptable to the District on the Project site.

1.11. Provide documentation, pictures, and other information and assistance to the District for the District's use on a website for public access to show Project status.

1.12. Cooperate and coordinate with the persons responsible for operation of the District's labor compliance program, if applicable.

1.13. Comply with any storm water management program that is approved by the State and County and applicable to the Project, at no additional cost to the District.

1.13.1. Ensure that all Project contractor(s), Project sub-contractor(s) and Construction Manager's Consultant(s) comply with any District-approved storm water management program that is applicable to the Project, at no additional cost to the District.

1.14. Provide direction and planning to ensure Project adherence to applicable environmental requirements such as those emanating from the Environmental Protection Agency (EPA), Cal/EPA, the California Environmental Quality Act ("CEQA"), Air Quality Management District and State of California and Regional Water Quality Control Board laws, regulations and rules. The Construction Manager shall comply with, and ensure that all contractors and their subcontractors and Design Team and their sub-consultants comply with, any storm water pollution prevention plans, other storm water management program and other environmental impact mitigation requirements that are approved by the District and applicable to the Project, at no additional cost to the District.

1.15. Construction Manager is <u>NOT</u> responsible for the following scopes of work or services, but shall assist the District in procuring these scopes of work or services when required and Construction Manager shall coordinate and integrate its work with any scopes of work or services provided by District related to the following:

1.15.1. Ground contamination or hazardous material analysis.

1.15.2. Any asbestos testing, design or abatement.

1.15.3. Compliance with the CEQA, except that Construction Manager shall provide current information for use in CEQA compliance documents.

1.15.4. Historical significance report.

1.15.5. Soils investigation.

1.15.6. Geotechnical hazard report.

1.15.7. Topographic survey, including utility locating services.

1.15.8. Other items specifically designated as the District's responsibilities under this Agreement.

2. GENERAL SERVICES

2.1. **General**: Monitor and advise the District as to all material developments in the Project. Construction Manager shall develop and implement with District approval reporting methods for schedules, cost and budget status, and projections for the Project. Construction Manager shall be the focal point of all communication to and from the District's construction contractor(s) for the Project and shall be copied on all communications between District and its Design Team.

2.2. **Scheduling**: Prepare methods to track and report on schedule status for the Project. Construction Manager shall develop master schedules and milestone schedules for the Project, and shall report on same bi-weekly to the District.

2.3. **Cost Controls**: Prepare and implement methods to budget and track all expenditures on the Project. Construction Manager shall generate monthly reports to the District reflecting this information.

2.4. **Communications to Board**: The Construction Manager may be required to attend meetings of the District's governing board, and to provide updates as requested. In addition, the Construction Manager may be asked to attend District property committee meetings, Facilities Sub Committee, Citizen Bond Oversight Committee meetings, or other Project-related meetings within the community.

3. PRECONSTRUCTION PHASE (CD through Bid-Phase)

3.1. Provide overall coordination of the Project; serve as the focal point of communication, transmitting information to the District and Project team on general aspects of the Project, including planning, scheduling, cost management, progress reporting, design review, dispute resolution, and documentation. Communications from the A/E(s) to District and Project Design Team shall be through the Construction Manager. The Construction Manager shall receive simultaneous copies of all written communications from the District or the Project Design Team to the contractor(s).

3.2. Develop and implement District-approved implementation procedures, forms, and reporting requirements for the Project that involve all members of the

Project teams, including District, Design Team, and construction contractor(s).

3.3. **Value Engineering.** Provide value engineering that will consist of a review of the proposed materials, equipment, systems and other items depicted in the Design Documents and shall be coordinated with the District's design guidelines and the Design Team. The Construction Manager will prepare a value engineering report that will document the results of the evaluation and make recommendations to the District with respect to alternatives, deletions, or amendments of such proposed items that pertain to the anticipated construction costs, useful life, maintenance and operational costs and efficiencies. The Construction Manager shall provide to the District value engineering recommendations and cost/benefit analysis of those recommendations.

3.3.1. Value engineering is expected to be an ongoing process to determine ways to build a more efficient and economical Project without reducing its quality and meet its goals and objectives.

3.4. **Constructability Reviews.** The Construction Manager shall review the design documents for clarity, consistency, constructability and coordination in compliance with District Design Guidelines. The results of the review shall be provided in writing and as notations on the documents to the District. The Construction Manager's actions in reviewing the Project design and design documents and in making recommendations as provided herein are advisory only to the District. The Design Team members are not third party beneficiaries of the Construction Manager's work described in this paragraph and the Design Team members remains solely responsible for the contents of design drawings and design documents. Construction Manager is required to back-check A/E documents to confirm all comments have been integrated into design documents.

3.5. Establish schedules for the soils consultant, for any hazardous materials testing and other consultants, and review costs, estimates, and invoices of each.

3.6. Develop and implement a management control system to support such functions as planning, organizing, scheduling, budgeting, reporting progress and identifying and documenting problems and solutions for the Project. The system will allow for bi-monthly progress reports to the District regarding the schedule for the Project.

3.7. Organize an initial planning workshop to create baseline parameters for the Project, to define overall building requirements, Project strategy, conceptual budget and schedule. Pursuant to understandings reached at these meetings, Construction Manager will develop an implementation plan that identifies the various phases of the Project, coordination among phases, and budget and time constraints for each phase of the Project. The plan will include a detailed strategy, master budget and master schedule as well as identification of critical events and milestone activities.

3.8. Construction Manager shall in consultation with District and according to District approved policies, procedures, and standards, implement procedures,

forms, and reporting requirements for the Project. Establish, accordingly, a communications procedure for the Project that allows for decision making at appropriate levels of responsibility and accountability.

3.9. Work with the Design Team to modify or add to standard, special, or general conditions for Contract Documents that might be needed for unique Project or bid package conditions, for District's approval.

3.10. Work with the Design Team to separate the construction phase for the Project into bid packages.

3.11. Conduct pre-construction conferences with successful contractors.

3.12. Schedule and conduct preconstruction meetings; walkthroughs, maintain, prepare, and distribute minutes.

3.13. Coordinate with District staff, contractor(s), and school site staff, and develop construction staging plans that shall accommodate, without limitation, school site occupancy, parking, traffic, and safety.

3.14. Ensure that Design Team and contractor(s) timely obtain all required permits, inspections, and approvals (DSA, DPH, etc.) necessary to complete the Project.

4. CONSTRUCTION PHASE

4.1. Administer the construction and site.

4.2. Monitor the construction contractor(s) to verify that tools, equipment, and labor are furnished and work performed and completed within the time as required or indicated by the plans and specifications, to the satisfaction of the District. Construction Manager expressly agrees to verify that the specifications are met, observed, performed, and followed in accordance with the professional standards of care for construction management. Construction Manager shall not, however, be responsible for directing construction contractor(s)' means and methods.

4.3. Assist District in resolving issues pertaining to the plans and specifications. Assist District in review and approval of requests for substitution of materials or any deviation from the plans and specifications that are made by the Design Team or contractor(s).

4.4. Monitor work of the construction contractor(s) to effectively manage the project to achieve the District's objectives in relation to cost, time and quality. Construction Manager shall not, however, be responsible for directing construction contractor(s)' means and methods.

4.5. Conduct construction meetings for the Project to discuss and resolve such matters as progress, quality and scheduling. Said meetings shall be weekly unless Project conditions do not require that frequency. Prepare and promptly distribute minutes. When required by field or other conditions, construction progress, or the quality of workmanship, conduct special construction meetings: record, prepare, and distribute minutes of these

meetings to the District, the affected construction contractor(s), and the Design Team.

4.6. Attend Project job site meetings.

4.7. Ensure that construction contractor(s) provide construction schedules as required by their construction contracts, including activity sequences and durations, submittal schedule, or procurement schedule for products that require long lead time. Construction Manager shall review construction contractor(s)' construction schedules for conformity with the requirements of the construction contract(s) and conformity with the overall schedule for the Project. Where construction contractor(s)' construction schedules do not conform, Construction Manager will take appropriate measures to secure compliance, subject to District approval.

4.8. Ensure construction contractor(s)' compliance with the requirements of their respective construction contracts for updating, revising, and other obligations relative to their respective construction schedules. Construction Manager shall incorporate construction contractor(s)' construction schedule updates and revisions into the Project construction schedule.

4.9. Continually monitor whether construction contract requirements are being fulfilled and recommend courses of action to the District when contractor(s) fails to fulfill contractual requirements.

4.10. The Construction Manager may authorize minor variations in the work from the requirements of the contract documents that do not involve an adjustment in the contract price or the contract time or design and which are consistent with the overall intent of the contract documents. The Construction Manager shall provide to the Design Team and the District copies of these authorizations.

4.11. Develop, implement, and coordinate with assistance from the District, the Design Team, and the Project Inspector(s) ("Inspector"), procedures for the submittal, review, verification and processing of applications by contractor(s) for progress and final payments for all construction contracts.

4.12. The Construction Manager shall review the Contractor(s)' Safety Program submittals and review and document the implementation of the Contractor(s)' Safety Program. The Construction Manager shall report any observed deviations from the Contractor(s)' Safety Program and applicable CalOSHA requirements to the appropriate contractor personnel and follow-up with a written safety notice to both the contractor and the District. Neither the Construction Manager nor the District shall be responsible for or have any liability for contractors(s) failure to provide, comply with or enforce said safety programs.

4.13. Record the progress of the Project by a daily log in MIS.

4.14. Coordinate, communicate with School Administrators at Project site to ensure collaboration between Construction Team and School.

4.14.1. Move Management. Develop matrix that identifies all moves.

4.14.2. Move school in coordination of phasing plan.

4.14.3. Hold site meetings with staff to communicate move schedule.

4.15. Monitor ongoing Project costs to verify that projected costs do not exceed approved budget and provide the District timely notice of any potential increase in costs in excess of approved budgets provided to Construction Manager.

4.16. Negotiate contractor's proposals and review change orders prepared by the Design Team, with the Design Team's input as needed, for approval by the District's governing board. Coordinate with Contractor(s) and Design Team to provide District change order documentation in standard District format. Assist District to prepare reports for the District's governing board on change orders and the status of all Project contingency funds.

4.17. Maintain a change order log for the Project and implement procedures to expedite processing of change orders (MIS).

4.18. Implement procedures for issues identification and resolution of actual or potential claims of construction contractor(s) and take actions to mitigate all claims against the District and attempt to eliminate and/or settle all claims.

4.19. Assist District in selecting and retaining special consultants including, without limitation, project inspectors, hazardous materials consultants, geotechnical engineers, commission agents, surveyors, and testing laboratories, and coordinate their services.

4.20. Assist District in review and approval of uses of any Project contingency fund.

4.21. Assist District in review and timely approval of contractor Pay Applications and retention release(s).

4.22. In conjunction with the Inspector and the Design Team, monitor work of the construction contractor(s) to determine that the work is being performed in accordance with the requirements of the Construction Documents and all DSA requirements. As appropriate, with assistance from the Design Team and the Inspector, make recommendations to District regarding special inspection or testing of work that is not in accordance with the provisions of the construction Contract Documents.

4.23. To protect District against defects in the work of the construction contractor(s), Construction Manager shall establish and implement a quality control program to monitor the quality and workmanship of construction for conformity with:

4.23.1. Accepted industry standards;

4.23.2. Applicable laws, rules, or ordinances; and

4.23.3. The design documents and Contract Documents;

4.24. Where the work of a Construction contractor does not conform as set forth above, Construction Manager shall, with the input of the Design Team and District:

4.24.1. Notify the District of any non-conforming work observed by the Construction Manager, A/E, IOR and District;

4.24.2. Reject the non-conforming work; and

4.24.3. Take any and all action(s) necessary to compel the construction contractor(s) to correct the work.

4.25. Maintain logs in MIS of requests for information ("RFI") from construction contractor(s), based on information obtained from the Design Team.

4.26. Establish and implement procedures, in collaboration with the District and the Design Team, for expediting the processing and approval of shop drawings, product data, samples, and other submittals for each contract. Receive and transmit all submittals from the Construction contractor(s) to the Design Team for review and approval. Maintain submittal and shop drawing logs.

4.27. Record the progress of work at the Project. When present, prepare daily reports for the Project containing a record of weather, construction contractor(s) present and their number of workers, work accomplished, problems encountered, and other relevant data.

4.28. Prepare and distribute monthly project status reports for the Project, including updates on project activities, progress of work, outstanding issues, potential problems, schedule, status of RFIs, change orders, and submittals.

4.29. Maintain at the Project site and, if necessary at the District Facilities office, a current copy of all approved documents, drawings, specifications, addenda, change orders and other modifications, and drawings marked by the construction contractor(s) to record all changes made during construction. These shall include shop drawings, product data, samples, submittals, applicable handbooks, maintenance and operating manuals and instructions, and other related documents and revisions which are relevant to the contract work. Maintain records of principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations as provided by the construction contractor(s). At the completion of the Project, deliver all such records to District. Construction contractor(s) and the Design Team share responsibility to prepare "Record Drawings" and "As-Built" documents.

5. PROJECT COMPLETION

5.1. The Construction Manager shall coordinate and schedule, with District's maintenance personnel, the construction contractor's final check and test of utilities, operational systems and equipment, and start-up and testing. The Construction Manager shall maintain records of start-up and testing as provided by the construction contractor(s), ensure District of compliance with applicable provisions of the contract(s), that all work has been performed and accepted, and that all systems are complete and operative.

5.2. At the punch list phase of the Project or designated portions thereof, the Construction Manager shall, in consultation with the Architect(s), the Design Team and Inspector, ensure the preparation of a list of incomplete or unsatisfactory work or work which does not conform to the requirements of the contract documents ("punch list work") and a schedule for the completion of the punch list work. The Construction Manager shall provide this list to the construction contractor(s). The Construction Manager shall coordinate construction contractors' performance and completion of punch list work. The Construction Manager shall review the completed punch list work with the District, the Architect(s), the Design Team and Inspector. The Construction Manager shall ensure, with input from these entities that the completed punch list work complies with applicable provisions of the Construction contract.

5.3. The Construction Manager shall determine, with the District, the Design Team and Inspector, when the Project or designated portions thereof are complete.

5.4. The Construction Manager shall conduct, with the District, the Design Team and Inspector, final inspections of the Project or designated portions thereof. The Construction Manager shall notify District of final completion.

5.5. The Construction Manager shall consult with the District, the Design Team and Inspector and shall determine when the Project and the contractor's work are finally completed. The Construction Manager shall assist with the issuance of a Certificate of Final Completion, and shall provide to the District a written recommendation regarding payment to the contractors.

5.6. Construction Manager shall provide signed end of phase "Substantial Completion" forms at the end of each Phase of the Project, up through and until Final Completion.

6. FINAL DOCUMENTS

6.1. The Construction Manager shall review, monitor and approve all as built drawings, maintenance and operations manuals, warranty/guarantee certificates, and other closeout documents to be sure all required documents meeting contract requirements are provided, and shall secure and transmit to the District those documents and all required guarantees, keys, manuals, record drawings, and daily logs and other items. The Construction Manager shall also forward all documents and plans to the District upon completion of the project and ensure all such plans and documents are well organized for any appropriate audit or review of the Project.

6.2. The Construction Manager shall use its best efforts and all due diligence to ensure all Project participants provide all required closeout documents and information on a timely basis and to not cause a delay in Project completion or DSA's approval of the Project."

7. AUDIT

Construction Manager shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all

business operations of Construction Manager transacted under this Agreement. Construction Manager shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Pursuant to Government Code Section 8546.7, this Agreement shall be subject to examination and audit of the State Auditor as specified in the code. Construction Manager shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Construction Manager and shall conduct audit(s) during Construction Manager's normal business hours, unless Construction Manager otherwise consents.

EXHIBIT "B"
CRITERIA AND BILLING FOR EXTRA SERVICES

The following Extra Services to this Agreement shall be performed by Construction Manager if needed and requested by District as indicated in the Agreement. The rates identified in the Fee Schedule attached to **Exhibit "D"** include overhead, administrative cost and profit and shall be utilized in arriving at the fee for Extra Services:

1. Providing services required because of significant documented changes in the Project initiated by the District, including but not limited to size, quality, complexity, the District's schedule, or method of bidding or negotiating and contracting for construction.

2. Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing services required in connection with replacement of such work.

3. Providing services made necessary by the default of contractor(s), or by major defects or deficiencies in the work of the contractor, or by failure of performance of the District's consultants, or in the absence of a final Certificate of Payment, more than sixty (60) days after the date of completion of work on the Project involved.

4. The selection, layout, procurement or specification at the District's request of movable furniture, furnishings, equipment or other articles that are not included in the Contract Documents.

5. Providing surveys relative to future facilities, systems or equipment which are not intended to be constructed during the Construction Phase.

6. Preparing to serve or serving as a witness in connection with any public hearing (except for a contractor's hearing necessitated by its request to substitute a subcontractor), dispute resolution proceeding or legal proceeding, other than that necessitated by the negligent acts, errors or omissions of Construction Manager or where the Construction Manager is party thereto.

7. Performing technical inspection and testing.

8. Providing any other services not otherwise included or reasonably inferred by the terms in this Agreement or not customarily furnished in accordance with generally accepted scope of project construction management practice.

EXHIBIT "C"
SCHEDULE OF WORK

[TO BE AGREED TO BY THE PARTIES AND ATTACHED PRIOR TO EXECUTION OF THE AGREEMENT.]

EXAMPLE

1. Construction Manager shall perform the work diligently as described in **Exhibit "A"** in accordance with the "Schedule of Work" set forth herein, and shall commence work upon receipt of any applicable Notice to Proceed ("NTP") from District. Construction Manager acknowledges and agrees time is of the essence and failure of Construction Manager to perform work on time as specified in this Agreement is a material breach of this Agreement.

2. Schedule of Work:

ACTIVITY	ESTIMATED DURATION	ANTICIPATED START DATE (SUBJECT TO CHANGE)
Board Approval of Contract Award	N/A	
Mobilize Staff	x Days	
Construction Baseline Schedule Review	x Days	TBD: Anticipated May 2017
Contractor's Submittals Review	X Days	TBD: Anticipated May 2017
Construction Administration / Issuance of NTP	X Days from Issuance of NTP (upon commencement of Project construction)	TBD: Anticipated May 2017
Punchlist Development	30 Days	TBD: Anticipated Oct. 2018
DSA Close-Out	90 Days	TBD: Anticipated Oct. 2018

3. The Parties acknowledge and agree that the Schedule of Work is based on estimated days of duration and anticipated start dates, which are subject to change, including without limitation any milestone schedules which may be revised to accommodate the actual NTP date. Accordingly, upon issuance of the NTP, the Parties agree to amend in writing the Schedule of Work, as necessary and appropriate, to further clarify the schedule of activities and start dates therefor.

4. No changes, amendments, or alterations to the Schedule of Work set forth herein, including without limitation those which may impact the Construction Manager's Fee hereunder this Agreement, shall be effective unless in writing and signed by both Parties.

EXHIBIT "D"
FEE SCHEDULE

1. Compensation

1.1. The Construction Manager's fee set forth in this Agreement shall be full compensation for all of Construction Manager's Services incurred in its performance, including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Project location, offices, per diem expenses, printing, providing, or shipping of deliverables in the quantities set forth in **Exhibit "A."**

1.2. The Fee shall not exceed the amount set forth in the Agreement, including all billed expenses, without advance written approval of the District. The Fee shall be paid as indicated below.

PERCENTAGE OF TOTAL FEE PER PHASE		
Phase		**Phase Amount**
Pre- Construction Phase		
Construction Phase		%
Project Completion Phase (Close Out) - (Divided as indicated below)		
Sign Off On Punch List	3%	
Receive and Review All M & O Documents	3%	
Filing All DSA Required Close Out Documents	3%	
Receiving DSA Close Out Certification	1%	

1.3. District shall retain one percent (1%) of Construction Manager's fee or Ten Thousand Dollars ($10,000), whichever is greater, until DSA has approved the Project.

2. Method of Payment

2.1. Construction Manager shall submit monthly invoices on a form and in the format approved by the District.

2.2. Construction Manager shall submit these invoices in duplicate to the District via the District's authorized representative.

2.3. Construction Manager shall submit to District on a monthly basis documentation showing proof that payments were made to its Consultants. No markup shall be allowed for Consultant costs in the performance of the Services.

2.4. Upon receipt and approval of Construction Manager's invoices, the District agrees to make payments on all undisputed amounts within sixty (60) days of receipt of the invoice.

3. Hourly Rates

3.1. The following rates, which include overhead, administrative cost and profit, shall be utilized in arriving at the fee for Extra Services and shall not be changed for the term of the Agreement. Construction Manager shall bill in quarter-hour increments for all Extra Services.

Job Title	Hourly Rate
Project Director:	
Project Manager:	
Senior Estimator:	
Lead Scheduler:	
Assistant Project Manager:	
Administration:	

3.2. On July 1 following the first full year of the Agreement, and on each July 1 for the term of the Agreement, the hourly wage rates for each listed Job Title will be adjusted by the percentage change in the Employment Cost Index for private industry workers, wages and salaries (not seasonally adjusted), from March of the prior year to March of the current year. Example: the increase to go into effect on July 1, 2017 will be the increase in the ECI series between March 2015 and March 2016, while the increase to go into effect on July 1, 2018 will be the increase in the ECI between March of 2016 and March of 2017.

3.3. The mark-up on any approved item of Extra Services performed by Consultant(s) shall not exceed the Employment Cost Index in effect at the time the Extra Services are performed.

EXHIBIT "E"- CERTIFICATIONS

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

> Every employer except the State shall secure the payment of compensation in one or more of the following ways:
>
> a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
>
> b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

Date: _____

Proper Name of Consultant: _____

Signature: _____

Print Name: _____

Title: _____

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION CERTIFICATION

I am aware of and hereby certify that neither _____ [Type name of Consultant] nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. I further agree that I will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts.

Where the Consultant or any lower participant is unable to certify to this statement, it shall attach an explanation hereto.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal of the above named Consultant on the _____ day of _____ 20__ for the purposes of submission of this Agreement.

By: _____

Signature

_____

Typed or Printed Name

_____

Title

CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of the Consultant currently under contract ("Contract") with the District; that I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant. Consultant has taken at least one of the following actions with respect to the construction Project that is the subject of the Contract (check all that apply):

_____Consultant has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Consultant's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Consultant's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

_____Pursuant to Education Code section 45125.2, Consultant has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Consultant's employees and District pupils at all times; and/or

_____Pursuant to Education Code section 45125.2, Consultant certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Consultant who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Consultant's employees and its subcontractors' employees is

Name: _____

Title: _____

_____The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

Megan's Law (Sex Offenders). I have verified and will continue to verify that the employees of Consultant that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (http://www.meganslaw.ca.gov/).

Consultant's responsibility for background clearance extends to all of its employees, Subcontractors, and employees of Subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Consultant.

Date: _____

Proper Name of Consultant: _____

Signature: _____

Print Name: _____

Title: _____

ROOFING CONTRACT FINANCIAL INTEREST CERTIFICATION
(Public Contract Code section 3006)

PROJECT/CONTRACT NO.: _____ between **Oakland Unified School District** ("District" or "Owner") and _____ ("Consultant") ("Contract" or "Project").

I _____,
Name of Consultant

certify that I have not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with the roof project contract on this project. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Furthermore, I _____,
Name of Consultant

certify that I do not have, and throughout the duration of the contract, I will not have, any financial relationship in connection with the performance of this contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I _____, Name of Consultant
Have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract:

Name of firm ("Firm"): _____

Mailing address: _____

Addresses of branch office used for this Project: _____

If subsidiary, name and address of parent company: _____

I certify that to the best of my knowledge, the contents of this disclosure are true, or are believed to be true.

Date: _____

Proper Name of Consultant: _____

Signature: _____

Print Name: _____

Title: _____