

FORM OF AGREEMENT

This Attachment “1” to the RFQ is an *Agreement for Independent Consultant(s)*, including the insurance and indemnification provisions that the District will include in its consultant contracts.

Please indicate in your firm’s Proposal if your firm has any comments or objections to the Form of Agreement.

PLEASE NOTE: The District does not intend to consider any substantive changes to the Form of Agreement if they are not submitted at or before this time.

INDEPENDENT CONSULTANT CONTRACT

No. _____

**AGREEMENT BETWEEN SAN FRANCISCO UNIFIED SCHOOL DISTRICT
AND**

This Independent Consultant Contract (“Agreement” or “Contract”) is made as of the _____ day of _____ in the year 20____, between the **San Francisco Unified School District** (“District”) and _____ (“Consultant”). The District and Consultant may be individually referred to herein as a “Party” or collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, absent an exception or exclusion, competitive solicitation is required when contracting for Goods and Services in excess of the State bid limit, adjusted annually for inflation;

WHEREAS, the District is authorized to contract with and employ any persons for the furnishing of special and professional services and advice if those persons are specially trained and experienced and competent to perform the services required;

WHEREAS, the District is in need of such services and advice and the Consultant warrants that it is specially trained, licensed and experienced and competent to perform the services required by the District;

WHEREAS, the Consultant agrees to perform the services described in this Agreement in accordance with the standards of its profession, to District’s satisfaction, and in accordance with this Agreement.

NOW, THEREFORE, the Parties agree as follows:

- 1. **Services.** Consultant shall furnish to the District the following services, as more fully described in **Exhibit "A,"** attached hereto and incorporated herein by this reference (“Services” or “Work”):

[INSERT GENERAL DESCRIPTION OF SERVICES]

- 2. **Term.** Consultant shall commence providing Services under this Agreement on _____, 20____, and will diligently perform as required or requested by District as applicable. The term for these Services shall expire on _____, 20____. This Agreement may be extended upon mutual approval of both Parties in writing on an annual basis to the extent permissible under applicable law.

- 3. **Services Consultant Agrees To Perform.** **TBD**

- 4. **Submittal of Documents.** The Consultant shall not commence the Work under this Agreement until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

_____ Signed Agreement (including Exhibits)	_____ Debarment Certification
_____ Insurance Certificates & Endorsements	_____ Fingerprinting/Criminal Background
_____ W-9 Form	_____ Roofing Certification
_____ Workers' Compensation Certificate	_____ Other:_____

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5. **Compensation.** District agrees to pay the Consultant for Services satisfactorily rendered pursuant to this Agreement, at the rates indicated and as more specifically described in **Exhibit “B,”** on an hourly basis and a per-item basis, as applicable, and up to a maximum amount not-to-exceed _____ [INSERT WRITTEN DOLLAR AMOUNT] Dollars (\$ _____) [INSERT NUMERICAL DOLLAR AMOUNT] (“Contract Price”). District shall pay Consultant only for all undisputed amounts in installment payments within thirty (30) days after the Consultant submits an invoice to the District for Work actually completed and after the District’s written approval of the Work, or the portion of the Work for which payment is to be made.
6. **Project Delivery Schedule of Work.** Consultant acknowledges and agrees time is of the essence and failure of Consultant to perform work on time as specified in this Agreement is a material breach of this Agreement. Consultant shall perform the work diligently as described in **Exhibit “A”** in accordance with the “Schedule of Work” set forth in **Exhibit “D”**, and shall commence work upon receipt of any applicable Notice to Proceed (“NTP”) from District.
7. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing the Work. Expenses will not be charged on this Work above the maximum not-to-exceed amount of the Contract Price. Rates for expenses are included on the Schedule of Fees and Charges attached hereto as **Exhibit “B”**.
8. **Materials.** Consultant shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.
9. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees.
10. **Standard of Care.**
 - 10.1. Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant’s Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts. Consultant’s Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.
 - 10.2. Consultant hereby represents that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of the Agreement.
 - 10.3. Consultant shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Consultant understands that the District relies upon such professional quality, accuracy, completeness, and coordination by Consultant in performing the Services.
 - 10.4. Consultant shall ensure that any individual performing work under the Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the work assigned to them.
11. **Originality of Services.** Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.
12. **Copyright/Trademark/Patent.** Consultant understands and agrees that all matters produced under this

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Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

13. Termination.

- 13.1. **Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three days after the day of mailing, whichever is sooner.
- 13.2. **Without Cause by Consultant.** Consultant may, upon sixty (60) day's notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Consultant for services satisfactorily rendered to the date of termination. Written notice by Consultant shall be sufficient to stop further performance of services to District. Consultant acknowledges that this sixty (60) day notice period is acceptable so that the District can attempt to procure the Services from another source.
- 13.3. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
- 13.3.1. material violation of this Agreement by the Consultant; or
 - 13.3.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or
 - 13.3.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.
- Written notice by District shall contain the reasons for such intention to terminate and, unless within three (3) calendar days after that notice the condition or violation shall cease or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required Services from another Consultant. If the expense, fees, and/or costs to the District exceeds the cost of providing the Services pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.
- 13.4. Upon termination, Consultant shall provide the District with all documents produced maintained or collected by Consultant pursuant to this Agreement, whether or not such documents are final or draft documents.

14. **Indemnification.** To the furthest extent permitted by California law, Consultant shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, including without limitation the payment of all consequential damages ("Claim"), arising out of, pertaining to or relating to, in whole or in part, the negligence, recklessness, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services or from any activity, work, or thing done, permitted, or suffered by the Consultant in conjunction with this Agreement. The District shall have the right to accept or reject any legal representation that Consultant proposes to defend the indemnified parties.

15. Insurance.

- 15.1. The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.
- 15.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that insure against all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from Consultant's performance of any portion of the Services. (Form CG 0001 and CA 0001)

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- 15.1.2. **Workers’ Compensation and Employers’ Liability Insurance.** Workers’ Compensation Insurance and Employers’ Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers’ compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers’ Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.
- 15.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Consultant’s profession.
- 15.1.4. **Pollution Legal Liability. (if applicable)** 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. Two million dollars (\$2,000,000) 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.

15.1.5.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000
Automobile Liability Insurance - Any Auto	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000
Professional Liability	\$ 2,000,000
Workers Compensation	Statutory Limits
Employer’s Liability	\$ 1,000,000
Pollution Legal Liability	\$2,000,000

- 15.2. **Proof of Carriage of Insurance.** The Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage’s have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:
 - 15.2.1. A clause stating: “This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice.”
 - 15.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
 - 15.2.3. An endorsement stating that the District and the State and their representatives, employees, trustees, officers, and volunteers are named additional insureds under all policies except Workers’ Compensation Insurance, Professional Liability, and Employers’ Liability Insurance. An endorsement shall also state that Consultant’s insurance policies shall be primary to any insurance or self-insurance maintained by District.
 - 15.2.4. All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.
- 15.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A: VII, unless otherwise acceptable to the District.

16. **Payment Does Not Imply Acceptance of Work.** No payment shall in any way lessen the liability of

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Consultant to remedy or replace unsatisfactory work, service, products, equipment, or materials, if the unsatisfactory character of such work, service, products, equipment or materials was not detected at the time of payment. Service, products, materials, equipment, components, or workmanship that do not conform to the requirements of this Contract may be rejected by the District and in such case must be remedied or replaced by Consultant without delay at no additional cost to the District. Nothing in this Section shall preclude, limit, or waive any other remedy or remedies available to the District.

17. Subcontracting

- 17.1. The Consultant is prohibited from subcontracting this Agreement or any services provided pursuant to this Agreement unless:
- 17.2. Subcontracting is agreed to in writing and executed in the same manner as this Agreement.
- 17.3. No party on the basis of this Agreement shall in any way contract on behalf of or in the name of the other party of this Agreement, and violation of this provision shall confer no rights on any party and shall be void.

18. **Assignment.** The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant.

19. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Consultant observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.

20. **Labor Code Requirements.** Consultant and its subcontractors shall comply with all applicable provisions of the California Labor Code sections 1720-1861, without limitation, the payment of the general prevailing per diem wage rates for public work projects (including repairs and maintenance, where applicable) of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with the District/COE. In addition, the Consultant and each subcontractor shall comply with Sections 1735, 1777.5 and 1777.6, forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Consultant or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. **Registration:** As applicable, Consultant and its subcontractors shall comply with the registration and qualification requirements pursuant to sections 1725.5 and 1771.1 of the California Labor Code. **Certified Payroll Records:** Consultant and its subcontractor(s) shall keep accurate certified payroll records of employees, as applicable, and shall make them available to the District/COE immediately upon request.

21. **Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this agreement.

22. **Suspension and Debarment Certification.** A Consultant for any contract of one hundred thousand dollars (\$100,000) or more for goods/services must complete and submit to District a Suspension and Debarment Certification. This Certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, section 3017.510, Participants responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Consultant shall submit with the Contract a completed Suspension and Debarment Certification attached hereto as Exhibit "C."

23. **Disabled Veterans 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 (3) percent, 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

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use funds allocated under the Act. Therefore, to the extent feasible and pertaining to future hirings, the Consultant, before it executes the Contract, 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 Agreement, and documentation demonstrating the Consultant's good faith efforts to meet these DVBE goals.

24. **Safety and Security.** Consultant is responsible for maintaining safety in the performance of this Agreement. Consultant shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
25. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
26. **Anti-Discrimination; Compliance with Americans with Disabilities.**
 - 26.1. It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, religious creed, color, national origin, ancestry, AIDS/ARC/HIV status, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status and therefore the Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).
 - 26.2. Consultant acknowledges that, pursuant to the Americans Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a Consultant, must be accessible to the disabled public. Consultant shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Contract and further agree that any violation of this prohibition on the part of Consultant, its employees, agents or assigns will constitute a material breach of this Contract.
27. **Fingerprinting of Employees.** The Consultant shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Consultant shall not permit any employee to have any contact with District pupils until such time as the Consultant 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 Consultant's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant. Verification of compliance with this section shall be provided in writing to the District prior to each individual's commencement of employment or performing any portion of the Services and prior to permitting contact with any student.
28. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Consultant 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 Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.
29. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any manner which is permissible under the law. The District's evaluation may include, without limitation:

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- 29.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
- 29.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).

30. Conflict of Interest.

- 30.1. Consultant shall not make, participate in making, or in any way attempt to use his or her position, to influence a contract on behalf of the District when he or she knows, or has reason to know, that he or she has a personal financial interest in that contract.
- 30.2. Consultant shall comply with the District's Board Policy 3850, as may be amended during the Term of this Contract. BP 3850 provides: "That no Board Member or employee of the San Francisco Unified School District, except persons engaged in the performance of contracts as early retirees or consultants under the approved federally assisted programs, may participate in proposal process or have any interest, direct or indirect, in any contract made by or on behalf of the School District within two (2) years after the termination of a Board Member's term in office or the termination of employment with the School District. Except as herein provided, any contract or other transaction entered into for or on behalf of the School District, in violation of the terms herein provided, shall be void and unenforceable against the School District: (SFUSD Board Policy 3850)
- 30.3. Consultant and its agents, subcontractors and consultants ("Consultant Entities") may be required to disclose economic interests that they hold that could foreseeably be affected by the exercise of their public duties. If applicable, Consultant and Consultant Entities must submit a Statement of Economic Interests ("Form 700") as required by Cal. Govt. Code §§ 81000-91015; and SFUSD Board Rules and Procedures 9270, "Conflict of Interest Code")
 - 30.3.1. Consultant and Consultant Entities shall determine whether its participation in a contract may constitute a conflict of interest. Consultant shall notify the District immediately if it determines or obtains information that a potential conflict of interest exists.
- 30.4. **Additional Disclosure Requirement.** Consultant shall provide District the name of any employee of Consultant that is also a current or former member of the District's Governing Board or a District employee. Consultant shall submit the attached "Consultant's Disclosure Form Regarding SFUSD Officials" attached hereto as Exhibit "C". Consultant shall update this form, as necessary, during the Term of this Contract.
- 30.5. **Compliance with Gift Limits.** Consultant shall abide by applicable legal restrictions relating to offering gifts, meals or entertainment or other business courtesies to District officials. Consultant and Consultant Entities shall not:
 - 30.5.1. Offer, give, or promise to offer or give, directly or in directly, any money, gift or gratuity to any District contracting or procurement official at any time.
 - 30.5.2. Offer or give, directly or indirectly, any gifts in a calendar year to a District official which exceed the allowable gift limit. (See e.g. Cal. Govt. Code 89503; 2 CCR 18940.2. See also www.fooc.ca.gov)
- 30.6. **Employment Negotiations.** Prior to engaging in employment negotiations with a District employee (e.g. a job interview or discussion of a job offer), Consultant shall notify that District employee's supervisor of Consultant's interest in hiring said employee, so that, if applicable, and if practicable, a full separation may be established between the public employee and any governmental decisions regarding that Consultant.
- 30.7. **Consultant Certification.** In signing this Agreement, Consultant certifies that it will comply with conflict of interest laws and regulations, and SFUSD Board Policies. Consultant acknowledges that it is familiar with these provisions; certifies that it does not know of any facts that constitute a violation of

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such provisions; and agrees to promptly notify the District if it becomes aware of any such facts during the term of this Agreement.

- 31. **Submitting False Claims; Monetary Penalties.** Pursuant to Government Code §12650 et. seq., any person, including a contractor, subcontractor or a consultant, who submits a false claim, shall be liable to the District for three times the amount of damages which the District sustains because of the false claim. A person who commits a false claim act shall also be liable to the District for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to the District for a civil penalty.
- 32. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial 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.
- 33. **Disputes:** In the event of a dispute between the parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Consultant shall neither rescind the Agreement nor stop Work.
- 34. **Confidentiality.** In connection with this Agreement, the Consultant may have access to private or confidential information which may be owned or controlled by the District and that such information may contain proprietary details, the disclosure of which to third parties will be damaging to the District, its employees or students. Consultant also understands and agrees that the disclosure of such information may violate state and/or federal law and may subject the Consultant to civil liability. Consequently, Consultant agrees that all information disclosed by the District to the Consultant shall be held in strict confidence and used only in performance of the Agreement, unless disclosure is required by law or court order. Consultant shall exercise the same standard of care to protect such information as is used to protect its own proprietary data. Consultant shall comply at all times, as applicable, with the requirements of the Family Educational Records Privacy Act ("FERPA") and relevant state law regarding the confidentiality and handling of confidential student information, including but not limited to California Education Code sections 49073 and sequential. Consultant shall only access personally identifiable student information pursuant to parent consent, legitimate educational interest pursuant to the performance of this Contract, and/or other applicable provisions federal and state law allowing access to personally identifiable student information. Consultant shall not re-disclose personally identifiable student information unless pursuant to federal and state law. Contactor shall not use such student information or data for any purpose other than the District's purposes as specified in this Agreement. The Consultant and all Consultant's agents, personnel, employee(s), and/or subconsultant(s) shall maintain the confidentiality of all information received in the course of performing the Services. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement. Failure to comply with this Section may constitute a material breach if so deemed by the District.
- 35. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

SAN FRANCISCO UNIFIED SCHOOL DISTRICT

CONSULTANT

 Tel: _____ ; Fax: _____
 ATTN: _____

 Tel: _____ ; Fax: _____
 ATTN: _____

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

- 36. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the **SFUSD 2016 - Independent Consultant Contract**

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Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

- 37. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the California County in which the District’s administration offices are located.
- 38. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 39. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
- 40. **Section Headings.** The section headings contained herein are for convenience in reference and are not intended to define the scope of any provision of this Agreement.
- 41. **Incorporation of Recitals and Exhibits.** The Recitals, each exhibit and certificate attached hereto are hereby incorporated herein by reference.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the year and date first above written.

Board of Education Resolution #: _____

CONSULTANT

SAN FRANCISCO UNIFIED SCHOOL DISTRICT

Signature

Reeta Madhavan, Chief Financial Officer

David Goldin, Chief Facilities Officer

APPROVED AS TO FORM:

SFUSD Contract Administration

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Information regarding Consultant:

Consultant: _____

License No.: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Type of Business Entity:
 Individual
 Sole Proprietorship
 Partnership
 Limited Partnership
 Corporation, State: _____
 Limited Liability Company
 Other: _____

Employer Identification and/or
Social Security Number

NOTE: United States Code, title 26, sections 6041 and 6109 require non-corporate recipients of \$600 or more to furnish their taxpayer identification number to the payer. The United States Code also provides that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these rules, the District requires your federal tax identification number or Social Security number, whichever is applicable.

EXHIBIT “A”
Scope of Services

Consultant shall perform the following Services:

[INCLUDE/ATTACH A DETAILED SCOPE OF WORK (DO NOT INCLUDE ANY TERMS FROM CONTRACTOR'S PROPOSAL)]

EXHIBIT “B”
Hourly Personnel Rates
Schedule of Fees and Charges

1. Compensation

- 1.1. The Consultant’s fee set forth in this Agreement shall be full compensation for all of Consultant’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.

2. Method of Payment

- 2.1. Consultant shall submit monthly invoices on a form and in the format approved by the District.
- 2.2. Consultant shall submit these invoices in duplicate to the District via the District’s authorized representative.
- 2.3. Consultant 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 Consultant’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. Consultant shall bill in quarter-hour increments for all Extra Services.

Job Title	Hourly Rate

- 3.2. The mark-up on any approved item of Extra Services performed by Consultant(s) shall not exceed **three percent (3 %)**.

EXHIBIT "C"

CERTIFICATION REGARDING SFUSD OFFICIALS

TO BE COMPLETED BY CONSULTANT:

Name of Consultant:	
Services to be performed under the Contract:	
Schools/Locations where services will be performed:	
Total Amount to be paid by the District Under this Contract not to exceed:	
Term of Agreement:	

Are any of the Consultant’s employees (or owners) ALSO current SFUSD employees/Board members, or former SFUSD employees/Board members within the last two years? (Check “Yes” or “No” as applicable.)

- NO.** None of the Consultant’s employees (or owners) are current SFUSD employees/Board members or former SFUSD employees/Board members with the last two years.
- YES.** Consultant’s employees (or owners) listed below are current SFUSD employees/Board members or former SFUSD employees/Board members with the last two years. (If checked Consultant must complete table below. The list may be continued on an additional page as needed)

NAME	JOB TITLE(S) at SFUSD	DATE(S) Individual is/was SFUSD employment/Board	Form of PAYMENT Individual received from SFUSD

Certification by Consultant:

On behalf of Consultant, I hereby certify that, to Consultant’s knowledge, the information provided in this form is true, accurate, and complete. I agree that during the term of this Contract, if Consultant learns of information that differs from that provided above, including but not limited to the hiring of new personnel who are current SFUSD employees or Board members or former SFUSD employees or Board members within the last two years, Consultant shall promptly notify the District and update this form.

Consultant’s Signature Date

Print Name of Signatory

EXHIBIT “D”
SCHEDULE OF WORK

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

CERTIFICATES

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 **San Francisco Unified School District** (“District” or “Owner”) and _____ (“Consultant”) (“Contract” or “Project”).

I _____, _____
Name 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 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 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: _____