

SFUSD CONTRACT

#_____

MASTER AGREEMENT BETWEEN SAN FRANCISCO UNIFIED SCHOOL DISTRICT
AND

This Master Agreement is dated for convenience **[date]** and is entered into between **[contractor name]** (hereinafter "Consultant") and the San Francisco Unified School District (hereinafter "District")."

RECITALS

WHEREAS, The Consultant has experience and expertise in **construction management**.

WHEREAS, The District desires that the Consultant render professional services for **various school sites under the District's Proposition A 2011 Bond Program**.

WHEREAS, Consultant represents itself able and, for a consideration, willing to perform the services required by the District;

NOW, THEREFORE, for and in consideration of the promises hereinafter contained, the parties agree as follows:

1. AVAILABILITY OF FUNDS AND BUDGET AND FISCAL PROVISION AND TERMINATION IN THE EVENT OF NON-APPROPRIATION

a. This Master Agreement is subject to the budget and fiscal policies, regulations, and practices of the District.

b. The amount of the District's obligation hereunder shall not at any time exceed the amount herein stated.

c. The District has no obligation to renew this Master Agreement after expiration of its term. If funds are appropriated for a portion of a fiscal year, this Agreement will terminate, without penalty, at the end of the term for which funds are appropriated. **The District retains the right to carry forward this Master Agreement after expiration of its term.**

d. This section controls against any and all other provisions of this Agreement.

2. TERM OF THE AGREEMENT

The Agreement shall become effective beginning **[start date]** and shall terminate on or before **[end date]**.

3. SERVICES CONSULTANT AGREES TO PERFORM

A. Services Description

Consultant further agrees to perform the services provided for in the attached Appendix B, "Description of Services"

B. An Individual Services Agreement (“ISA”)

- i. An Individual Services Agreement as set forth in the attached Appendix A shall be used for each District site to document and track the services that are being performed by the Consultant.**
- ii. The Consultant shall provide the same services to each site as set forth in Appendix B of the Master Agreement. The District shall note under “WORK TO BE PERFORMED” in Appendix B will state whether the same services are being provided by the Consultant at the District site. However, the District project management for each District site where CONSULTANT will be providing the aforesaid services may also modify the services that have been set forth in Appendix B.**
- iii. Changes to services at a district site may only be made with the written consent of the District in consultation with and approval by the site’s project management.**
- iv. Changes to the Services shall be set forth in each individual ISA in the Section “WORK TO BE PERFORMED”.**
- v. The ISA shall be signed by the Consultant, the Director of Construction and the Bond Program Manager.**
- vi. A log of every ISA shall be presented to the San Francisco Board of Education for their review on a quarterly basis.**

4. COMPENSATION

The District’s maximum obligation pursuant to this Master Agreement, which includes any and all ISAs that are entered into pursuant to this Master Agreement shall not exceed **[master agreement’s contract value in words] [US \$master agreement’s contract value in numbers]**. The Consultant shall be paid as per its attached fee proposal **[Attachment A – breakdown of fees and charges]** for services rendered. Requests for compensation shall be monthly, complete with a breakdown of charges and receipts as applicable. Payments shall be made in a reasonable time upon approval that services have been rendered in a professional and timely manner as set forth in Section 3 of this Master Agreement. The amount of money to be paid to the Consultant under this Master Agreement shall not exceed **[master**

agreement's contract value in words] [US \$master agreement's contract value in numbers]. If the scope of work described herein is increased, the Master Agreement amount may also be increased provided that there is a prior written modification to the Master Agreement and a Board Resolution authorizing said increases. It shall be the responsibility of the Consultant to ensure that the total approved amount of the Master Agreement is not exceeded. Any work performed in excess of said amount shall not be compensated.

Contractor's overhead and profit on change orders resulting from errors and omissions on the part of the Consultant shall be deducted from the Consultant's fees.

5. TERMINATION

a. It is expressly understood and agreed that in the event the Consultant or the District fails to perform its obligations under this Master Agreement, this Master Agreement shall be terminated and all the Consultant's and District's rights hereunder ended. Termination shall be upon ten (10) days written notice to the defaulting party, and no work will be undertaken by Consultant after receipt of the notice. In the event this Master Agreement is terminated by the District pursuant to this paragraph; the Consultant shall be paid for services performed up to the date of termination.

b. It is further understood and agreed that the District may terminate this Master Agreement for the District's convenience and without cause at any time by giving the Consultant thirty (30) days written notice of such termination. In such an instance, the Consultant shall be entitled to compensation for services performed up to the effective date of termination.

c. Upon receipt of written notice that this Master Agreement is terminated, the Consultant will submit an invoice to the District for an amount that represents the value of services actually performed up to the date of termination for which the Consultant has not previously been compensated as per paragraph 4 above. Upon approval and payment of this invoice by the District, the District shall be under no further obligation to the Consultant, monetarily or otherwise.

6. INDEPENDENT CONTRACTOR

The Consultant shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which it performs the services required of **consultant** pursuant to the terms of this Master Agreement. The Consultant shall be liable for any act or acts of its own, or its agents or employees, and nothing contained herein shall be construed as creating the relationship of employer and employee between the District and the Consultant or its agents and employees. The Consultant shall also complete and file with the District the attached W-9 form.

7. MODIFICATION OF AGREEMENT

The parties may amend this Master Agreement in writing by mutual consent. Changes, including any increase or decrease in the amount of the Consultant's compensation, shall only be effective upon the execution of a duly authorized written amendment to this Master Agreement.

8. SUBCONTRACTING

The Consultant is prohibited from subcontracting this Master Agreement or any services provided pursuant to this Master Agreement unless:

- A. Subcontractors were identified in the consultant's staffing roster (Attachment B), *or*
- B. Subcontracting is agreed to in writing and executed in the same manner as this Master Agreement.

No party on the basis of this Master Agreement shall in any way contract on behalf of or in the name of the other party of this Master Agreement, and violation of this provision shall confer no rights on any party and shall be void.

9. ADMINISTRATIVE REMEDY FOR AGREEMENT INTERPRETATION

Should any question arise as to the meaning and intent of the Master Agreement, the matter shall, prior to any action or resort to any other legal remedy, be referred to the Superintendent who shall decide the true meaning and intent of the Master Agreement.

10. BANKRUPTCY

In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party, this Master Agreement shall terminate and be of no further force and effect, and any property or rights of such other party, tangible or intangible, shall forthwith be returned to it.

11. CONSULTANT'S DEFAULT

Failure or refusal of the Consultant to perform or do any act herein required shall constitute default. In the event of any default, in addition to any other remedy available to the District, the District may terminate this Master Agreement pursuant to the terms of Section 6a herein. Such a termination shall not waive any other legal remedies available to the District.

12. CONFLICT OF INTEREST

Consultant understands and certifies that it does not know of any facts which constitute a violation of the California Political Reform Act, which states in part: "[N]o public official at any level of state or local government shall make, participate in making or in any way attempt to use its official position to influence a governmental decision in which he/she knows or has reason to know he/she has a financial interest." (California Government Code Section 87100 et seq.)

Consultant also hereby certifies that no current Board member or employee of the San Francisco Unified School District, and no one who has been a Board member or an employee of the District within the last two years has participated in bidding, selling or promoting this Master Agreement. Furthermore, Consultant certifies that no such current or former Board member or employee will derive any compensation, directly or indirectly, from this Master Agreement. Consultant understands that any violation of this provision of the Master Agreement shall make the Master Agreement voidable by the District.

13. SEVERABILITY

If any term or provision of this Master Agreement shall be found illegal or unenforceable, this Master Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

14. AGREEMENT MADE IN CALIFORNIA

This Master Agreement shall be deemed to be executed in, and shall be construed in accordance with, the laws of the State of California.

15. INDEMNIFICATION

A. With respect to professional services to be provided under this Master Agreement, the Consultant shall indemnify and hold harmless the San Francisco Unified School District, its boardmembers, officers, directors, and employees from and against any and all actions, claims, damages and losses, including attorney's fees that may arise out of Consultant's negligent acts, errors, or omissions caused by the Consultant.

B. With respect to claims arising under Consultant's general liability coverage, the Consultant shall indemnify and hold harmless the San Francisco Unified School District, its **boardmembers**, officers, directors and employees from and against any actions, claims, damages or loss, including attorney's fees that may arise out of Consultant's activities in the performance of its services under this Master Agreement.

C. The Consultant shall indemnify and hold harmless the San Francisco Unified School District, its boardmembers, officers, **directors and** employees from any claims, loss, damage, injury and liability of every kind, nature and description that may at any times arise from any infringement of any patent right, copyright, trade secret or any other proprietary right or trademark by any of Consultant's officers, employees and/or agents by use or articles or services in the performance of this Master Agreement

16. INSURANCE

a. The Consultant shall procure and maintain during the term of this Master Agreement the following insurance:

(1) Comprehensive General Liability Insurance with limits not less than \$1,000,000.00 (one million dollars) each occurrence combined Single Limit for Bodily Injury and Property Damage.

(2) Comprehensive or Business Automobile Liability Insurance with limits not less than \$1,000,000.00 (one million dollars) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Owned, Non-owned and Hired Vehicles, as applicable.

(3) Workers' Compensation Insurance, with Employer's Liability limits not less than \$1,000,000.00 (one million dollars) each accident.

(4) Professional Liability (E & O) Insurance with limits not less than \$5,000,000.00 (five million dollars firm/joint venture team/per occurrence).

If any policies are written on a claims-made form, Consultant agrees to maintain such insurance continuously in effect for three years following completion of this Master Agreement or extend the period for reporting claims for three years following the completion of this Master Agreement, such that occurrences which take place during the Master Agreement period shall be insured for three years following completion of the Master Agreement.

b. The General Liability ~~and Comprehensive Automobile Liability~~ Insurance shall be endorsed to provide the following:

(1) Name as additional insureds the San Francisco Unified School District, its Board, officers and employees.

(2) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Master Agreement and that insurances apply separately to each insured against whom claim is made or suit is brought.

(3) Thirty (30) days advance written notice to the District of cancellation, non-renewal or reduction in coverage.

The Consultant shall provide the District with the appropriate certificate(s) of insurance prior to commencing performance. The Consultant shall also be obligated to notify the District in writing at least 30 (thirty) days in advance of any cancellation, non-renewal or reduction of any of its insurance policies required under this Master Agreement. Consultant also understands and agrees that the District may withhold payment for services performed for any violations of the insurance provisions of this Master Agreement.

17. NON-DISCRIMINATION

Consultant agrees that it shall not discriminate on the basis of sex, race, religious creed, national origin, age, marital status, sexual orientation, gender identity, AIDS/ARC/HIV status, or disability, in its performance under this Master Agreement. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services, and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to persons with disabilities. Contractor agrees not to discriminate against persons with disabilities in the provision of services, products, benefits, or activities provided in the Contract or Agreement, and further agrees that **any** violation of this prohibition on the part of the Contractor shall constitute a material breach of the Contract or Agreement.

18. CRIMINAL BACKGROUND CHECKS

Consultant agrees to comply with Education Code Section 45125.1, et seq. concerning fingerprinting employees and conducting criminal background checks through the California Department of Justice. The District is extending this requirement to all types of consultants if they are deemed to have more than limited contact with District students. The consultant shall assume all expenses associated with these background checks and shall immediately remove any employee or agent from District property who has been arrested or convicted of any serious or violent felony, as defined by the California Penal Code Sections 667.5 and 1192.7.

The District shall be the final arbiter of what constitutes "limited contact." The District may also, in its sole discretion, waive these provisions if it determines that emergency or exceptional circumstances exist which threaten student or staff safety if the work is delayed pending clearance. The Consultant's violation of this section shall constitute a default under Section 12 herein.

19. PROPRIETARY INFORMATION OF DISTRICT

The Consultant understands and agrees that, in its performance under this Master Agreement or in contemplation thereof, 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. The 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 confidence and used only in performance of the Master Agreement. The Consultant shall exercise the same standard of care to protect such information as is used to protect its own proprietary data.

20. NOTICES TO THE PARTIES

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and registered as follows:

TO THE DISTRICT: San Francisco Unified School District
135 Van Ness Avenue – Room 217
San Francisco, CA 94102

TO THE CONSULTANT: **CONSULTANT NAME**
ADDRESS
CITY, STATE, ZIP
CONTACT NAME AND PHONE NUMBER

21. WAIVER

Either party's failure at any time to enforce any default or right reserved to it, or to require performance of any of the Master Agreement's terms, covenants, or provisions by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

22. ASSIGNMENT

It is understood and agreed that the services to be performed by the Consultant are personal in character and neither this Master Agreement nor any duties or obligations hereunder shall be assigned or delegated by the Consultant without the prior written consent of the District.

23. OWNERSHIP OF THE RESULTS

Any interest of the Consultant in studies, reports, memoranda, computation sheets or other documents prepared by the Consultant in connection with services to be performed under this Master Agreement shall become the property of and will be transmitted to the District. However, the Consultant may retain and use copies for reference and as documentation of its experience and capabilities, but only to the extent Consultant's use does not violate Section 18 of this Agreement.

24. AUDIT AND INSPECTION OF RECORDS

The Consultant agrees to maintain and make available to the District accurate books and accounting records relative to its activities under this Master Agreement. The Consultant will permit the District to audit, examine and make excerpts and transcripts from such books and records, and to make audits of

all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Master Agreement, whether funded in whole or in part under this Master Agreement. The Consultant shall maintain such data and records in an accessible location and condition for a period of not less than three years after a final payment under this Master Agreement or until after final audit has been completed, whichever is later.

25. 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 Master Agreement.

26. ENTIRE AGREEMENT

The entire Master Agreement between the parties is included herein and no warranties, expressed or implied, representations, promises, or statements have been made by either party unless endorsed herein in writing, and no change or waiver of any provision hereof shall be valid unless made in writing and executed in the same manner as this Master Agreement.

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

Res.# _____

SAN FRANCISCO UNIFIED SCHOOL DISTRICT

By: _____
(Signature)

Joseph C. Grazioli
Chief Financial Officer

(Print)

David L. Goldin
Chief Facilities Officer

APPROVED AS TO FORM:

BY: _____
Legal Counsel, SFUSD

**San Francisco Unified School District
 Consultant/Independent Contractor Agreement
 Criminal Background Check**

Name of Independent Consultant/Contractor:	[name of consultant]			
Services performing under the Agreement:	[type of service]			
Schools/Locations where services are being performed:	[name of District site]			
Total amount to be paid by the District under this Agreement:	[not to exceed total Master Agreement amount]			
Term of Agreement:	[start date and end date]			
<i>Check the applicable box and fill in any blanks.</i>				
1.	I certify that none of my employees will have more than limited contact (as defined by the District) with District students during the term of the Agreement			
2A.	The following employees will have more than limited contact (as defined by the District) with District students during the term of the Agreement (attach and sign additional pages, as needed): <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr><td style="height: 20px;"> </td></tr> <tr><td style="height: 20px;"> </td></tr> <tr><td style="height: 20px;"> </td></tr> </table>			
2B.	I certify that the employees noted in 2A above have been fingerprinted under procedures established by the California Department of Justice, and the results of those fingerprints reveal that none of these employees have been arrested or convicted of a serious or violent felony, as defined by the California Penal Code.			

Certification by Contractor/Consultant

"I certify that the information provided herein is true and accurate. I further acknowledge that during the term of my Agreement with the District, if I learn of additional information which differs from the responses provided above, I promise to forward this additional information to the District immediately. "

 Consultant's Signature Date

 Printed name of Consultant

 Administrator's Signature Date

 David Goldin, Chief Facilities Officer
 Printed name of Administrator