AGREEMENT FOR PROGRAM MANAGEMENT SERVICES AND/OR CONSTRUCTION MANAGEMENT SERVICES
BY AND BETWEEN
SAN LEANDRO UNIFIED SCHOOL DISTRICT
AND
RGM AND ASSOCIATES
FOR
IMPLEMENTATION OF MEASURE J 1

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FORM

AGREEMENT FOR PROGRAM MANAGEMENT SERVICES AND/OR CONSTRUCTION MANAGEMENT SERVICES

This Agreement for Program Management Services and/or Construction Management Services ("Agreement") is made as of the 25th day of January, 2016, between the **San Leandro Unified School District** ("District") and **RGM AND ASSOCIATES** ("Consultant") (individually a "Party" and collectively the "Parties"), for the program management and/or construction management and administration of the following project(s) (individually and collectively referred to herein as the "Project(s)"):

- **Measure J1 (See Exhibit "A" for Project scope)**

The Project may include multiple components. Any one of the components or combination thereof may be changed, including terminated, in the same manner as the Project, as indicated herein, without changing in any way the remaining component(s). The provisions of this Agreement shall apply to each component without regard to the status of the remaining component(s). Consultant shall invoice for each component separately and District shall compensate Consultant for each component separately on a proportionate basis based on the level and scope of work completed for each component.

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

1.1.4. **Construction Cost Budget**: A component of the Construction that is 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 Consultant, the Design Team, the Consultant, the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District.

1.1.5. **Consultant(s)**: The entity listed in the first paragraph including all sub-consultant(s), subcontractor(s), or agent(s) to the Consultant.

1.1.6. **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 subconsultant or subcontractor.

1.1.7. **District**: The San Leandro Unified School District.

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

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

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

1.1.11. **Service(s)**: All labor, materials, supervision, services, tasks, and work that the Consultant 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 Consultant

2.1. **Scope**: Consultant shall provide the Services described herein and under **Exhibit "A"** for the Project. The District reserves the right to change the Services of which the Parties agree may require the Consultant'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 Consultant's services under this Agreement, Consultant agrees that it will maintain such coordination with District personnel and/or its designated representatives 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 Consultant employs Consultant(s), the Consultant 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. **Consultant's Services**: Consultant 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. Consultant's services will be completed in accordance with the schedule attached as **Exhibit "C."**

Article 3. Consultant Staff

3.1. The Consultant has been selected to perform the work herein because of the skills and expertise of key individuals.

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

Job Title	Name
Principal in Charge- Planning Assistance	Ralph Caputo
VP Operations- Planning Assistance	Jon Novero
Estimator	Marlin Jones/Greg Lykken
Sr Project Manager	Ridge Green
Sr Project Manager/Estimator	Jalil Bazyar

3.3. The Consultant shall not change any of the key personnel listed above without prior written approval by District, unless said personnel cease to be employed by Consultant. 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 Consultant shall immediately remove that person from the Project and provide a temporary replacement. Consultant 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. Consultant represents that the Consultant 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 Consultant.

Article 4. Schedule of Services

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

Article 5. Construction Cost Budget

5.1. The Consultant shall have responsibility to develop, review, and reconcile the Construction Cost Budget with the Design Team and the District throughout the design process and construction.

5.2. 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 Consultant, the Project design professional(s), the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District.

5.3. Consultant shall work cooperatively with the Project design professional(s) during the Schematic Design Phase, Design Development Phase, and Construction Documents Phase, as described in **Exhibit "A,"** so that the construction cost of the work designed by the Project design professional(s) will not exceed the Construction Cost Budget, as may be adjusted subsequently with the District's written approval. The Consultant shall notify the District if it believes the construction cost of the work by the Project design profession(s) will exceed the Construction Cost Budget. The Consultant, however, shall not perform or be responsible for any design or architectural services.

5.4. Evaluations of the District's Construction Budget, and preliminary and detailed cost estimates prepared by the Consultant, represent the Consultant's best judgment as a professional familiar with the construction industry.

5.5. If the Procurement Phase has not commenced within ninety (90) days after DSA approval, the Construction Cost Budget shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the District and the date on which proposals are sought.

5.6. If any of the following events occur:

5.6.1. If the lowest responsive base bid or proposal received is in excess of ten percent (10%) of the Construction Cost Budget, or

5.6.2. If the combined total of base bid or proposal and all additive alternates come in fifteen percent (15%) or more under the Construction Cost Budget, or

5.6.3. If the Construction Cost Budget increases in phases subsequent to the Schematic Design Phase due to reasonably foreseeable changes in the condition of the construction market in the county in which the District is located, in so far as these have not been caused by

Acts of God, earthquakes, strikes, war, or energy shortages due to uncontrollable events in the world economy,

then the District, in its sole discretion, has one or a combination of the following alternatives:

5.6.3.1. Give the Consultant written approval on an agreed adjustment to the Construction Cost Budget.

5.6.3.2. Authorize the Consultant to re-negotiate, where appropriate, or re-bid or re-solicit within three (3) months' time (exclusive of District and other agencies' review time) at no additional cost to the District.

5.6.3.3. Terminate this Agreement if the Project is abandoned, without further obligation by either party.

5.6.3.4. Instruct the Project design professional(s) to revise the drawings and specifications to bring the Project within the Construction Cost Budget for re-bidding or re-soliciting, with Consultant's performing cost estimating, value engineering, and/or bidding and solicitation support at no additional cost to the District.

5.7. The Construction Cost Budget shall be reconciled at the completion of each design phase.

Article 6. Fee and Method of Payment

6.1. District shall pay Consultant:

on a monthly time and materials basis for which Consultant shall bill its work under this Agreement on a monthly time and materials basis in accordance with **Exhibit "D."**

_____Twelve_____ (_12__) Months, beginning on January 25th, 2017.

6.2. District shall pay Consultant the Fee pursuant to the provisions herein and in **Exhibit "D**."

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

6.4. The Consultant's Fee set forth in this Agreement shall be full compensation for all of Consultant'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."** ("Fee")

Article 7. Payment for Extra Services

7.1. District-authorized Services outside of the scope in **Exhibit "A**" or District-authorized reimbursable fees not included in Consultant'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.

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7.2. A written proposal describing the proposed scope of services and listing the personnel, labor duration, rates, and cost shall be submitted by the Consultant to the District for written approval before proceeding with any Extra Services.

Article 8. Ownership of Data

After completion of the Project or after termination of this Agreement, Consultant shall deliver to District a complete set of Project records, including without limitation all documents generated by Consultant, 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 Consultant's possession.

Article 9. Termination of Agreement

9.1. If Consultant fails to perform Consultant's duties to the satisfaction of the District, or if Consultant fails to fulfill in a timely and professional manner Consultant's material obligations under this Agreement, or if Consultant 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 Consultant. In the event of a termination pursuant to this subdivision, Consultant 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 Consultant's actions, errors, or omissions that caused the District to terminate the Consultant.

9.2. 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, Consultant 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 Consultant's if there is a termination for convenience.

9.3. The Consultant 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 Consultant. Such termination shall be effective after receipt of written notice from Consultant to the District.

9.4. 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.

9.5. If, at any time in the progress of the Project, the governing board of the District determines that the Project should be terminated, the Consultant, upon written notice from the District of such termination, shall immediately cease work on the Project. The District shall pay the Consultant only the Fee associated with the Services provided, since the last invoice that has been paid and up to the notice of termination.

9.6. If the Project is suspended by the District for more than one hundred and eighty (180) consecutive days, the Consultant shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the schedule shall be adjusted and the Consultant's compensation shall be equitably adjusted to provide for expenses incurred in the

resumption of the Consultant's services. Upon resumption of the Project after suspension, the Consultant will take all reasonable efforts to maintain the same Project personnel.

Article 10. Indemnity

10.1. Consultant 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 Consultant, 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 Consultant's liability as to the active or sole negligence or willful misconduct of the District.

10.2. Consultant 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 Consultant, 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 Consultant proposes to defend the Indemnified Parties.

Article 11. Fingerprinting

11.1. Unless the District has determined pursuant to Education Code section 45125.2 that on the basis of scope of work in this Agreement that Consultant and its subcontractors and employees will have only limited contact with pupils, the Consultant 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 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, 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 Consultant. 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.

11.2. No drugs, alcohol and/or smoking 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.

11.3. Unacceptable and/or loud language will not be tolerated. "Cat calls" or other derogatory language toward students or public will not be allowed.

Article 12. Responsibilities of the District

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

12.2. The District shall provide to the Consultant complete information regarding the District's requirements for the Project.

12.3. 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).

12.4. The District shall, in a timely manner, and with Consultant'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 Consultant's and/or the design professional(s) duties to recommend or provide same.

12.5. The District, its representatives, and consultants shall communicate with the contractor either directly or through the Consultant.

12.6. 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 Consultant.

12.7. 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 13. Liability of District

13.1. 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.

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

13.3. 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 Consultant, or by its employees, even though such equipment be furnished or loaned to Consultant by District.

13.4. The Consultant 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. Consultant 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 Consultant's insurance company on behalf of the District.

Article 14. Insurance

14.1. Consultant 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 Consultant, their agents, representatives, employees and Consultant(s).

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

14.2.1. **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.

14.2.2. **Commercial Automobile Liability, Any Auto**. Two million dollars ($2,000,000) per accident for bodily injury and property damage.

14.2.3. **Workers' Compensation**. Statutory limits required by the State of California and

14.2.4. **Employer's Liability**. Two million dollars ($2,000,000) per accident for bodily injury or disease.

14.2.5. **Professional Liability**. This insurance shall cover the Consultant and his/her Consultant(s) for one million dollars ($1,000,000) 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.

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

14.4. **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 Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

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

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

14.5.2. The District, the Consultant, 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 Consultant; instruments of service and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

14.5.3. For any claims related to this project, the Consultant'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 Consultant's insurance and shall not contribute with it.

14.5.4. 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.

14.5.5. The Consultant'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.

14.5.6. 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.

14.6. **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.

14.7. **Verification of Coverage**: Consultant shall furnish the District with:

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

14.7.2. 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 15. Nondiscrimination

Consultant 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. Consultant shall comply with any and all regulations and laws governing nondiscrimination in employment.

Article 16. Covenant Against Contingent Fees

Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, 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 Consultant, 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 17. Entire Agreement/Modification

This Agreement, including the Exhibits hereto, supersedes all previous contracts and constitutes the entire understanding of the parties hereto. Consultant 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. Consultant specifically acknowledges that in entering this Agreement, Consultant relies solely upon the provisions contained in this Agreement and no

others.

Article 18. Non-Assignment of Agreement

In as much as this Agreement is intended to secure the specialized services of the Consultant, Consultant 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 Consultant and any such assignment, transfer, delegation or sublease without Consultant's prior written consent shall be considered null and void.

Article 19. Law, Venue

19.1. 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.

19.2. 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 20. 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. Consultant shall not rescind or stop the performance of its Services pending the outcome of any dispute.

Article 21. 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 22. Employment Status

22.1. Consultant 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 Consultant performs the services which are the subject matter of this Agreement; provided always, however, that the services to be provided by Consultant shall be provided in a manner consistent with all applicable standards and regulations governing such services.

22.2. Consultant understands and agrees that the Consultant'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.

22.3. 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 Consultant 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 Consultant which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.

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

22.5. 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, Consultant shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Consultant is an employee for any other purpose, then Consultant 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 Consultant was not an employee.

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

Article 23. Warranty of Consultant

23.1. Consultant warrants that the Consultant 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.

23.2. Consultant 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.

23.3. **Labor Code Requirements.** Consultant 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 Consultant 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 Consultant 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 Contractor 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 Contractor 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, Contractor and its subcontractors shall comply with the registration and qualification requirements pursuant to sections 1725.5 and 1771.1 of

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the California Labor Code. **Certified Payroll Records**: Contractor 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..

Article 24. Cost Disclosure - Documents and Written Reports

Consultant 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 25. Communications / Notice

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

District	**Consultant**
San Leandro Unified School District 835 E. 14th Street, Suite 200 San Leandro, CA 94577 Attn: Aaron Kerrigan, Director of Facility and Operations	RGM and Associates 3230 Monument Way Concord, CA 94518 ATTN: Ralph Caputo

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the day after delivery. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

Article 26. 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 Consultant 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 Consultant's good faith efforts to meet these goals.

Article 27. Other Provisions

27.1. The Consultant shall be responsible for the cost of construction change orders caused directly by the Consultant's willful misconduct or negligent acts, errors or omissions. Without limiting Consultant's liability for indirect or consequential cost impacts, the direct costs for which the Consultant 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.

27.2. 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 Consultant shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Consultant's failure to perform any of the services furnished under this Agreement to the standard of care of the Consultant for its Services, which shall be, at a minimum, the standard of care of Consultants performing similar work for California school districts at or around the same time and in or around the same geographic area of the District.

27.3. 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.

27.4. The Architect acknowledges that the District is a public agency that is subject to heightened curiosity by the news media and the public and that the Architect may not be apprised of all facts surrounding the Project that Architect is working on. Accordingly, Architect shall promptly refer all inquiries from the news media or public concerning this Agreement or its performance under the Agreement to the District, and Architect shall not make any statements or disclose any documents to the media or the public relating to the performance under this Agreement or the effects caused thereby. If Architect receives a complaint from a citizen or member of the public concerning the performance or effects of this Agreement, it shall promptly inform the District of that complaint. In its sole discretion, the District shall determine the appropriate response to the complaint.

27.5. Architect represents that the Architect 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 the Services and that no person having any such interest shall be employed by Architect.

27.6. Architect, and its Consultants, and employee(s) shall maintain the confidentiality of all information received in the course of performing the Services. Architect understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

27.7. **Exhibits A** through **E** and all Certificates attached hereto are hereby incorporated by this reference and made a part of this Agreement.

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

Dated: _____, 20___	Dated: _____, 20___
San Leandro Unified School District	_____
By: _____	By: _____
Print Name: _____	Print Name: _____
Print Title: _____	Print Title: _____

FORM

EXHIBITS

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EXHIBIT "A"
RESPONSIBILITIES AND SERVICES OF CONSULTANT

[DRAFT PROVISIONS ONLY. TO BE FINALIZED BY DISTRICT AND THE SUCCESSFUL FIRM. SEE ALSO SCOPE WITHIN RFQ/RFP.]

Consultant shall provide professional services necessary for completing the following:

1. **PROGRAM MANAGEMENT SERVICES.** Consultant shall provide these program management services.

1.1. **Regulatory Agencies.** Advise the District as to the regulatory agencies that have jurisdiction over Projects in the Program, and as to coordination with and implementation of the requirements of the regulatory agencies including, without limitation, the Division of the State Architect, the California Department of Education, the Department of Toxic Substances Control, the Department of Industrial Relations, the Office of Public School Construction, and the State Allocation Board.

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

1.3. **Existing Conditions.** Compile all District information and documentation of existing conditions including, without limitation, soils reports, topographic surveys, geotechnical reports, as-built drawings, site maps, etc.

1.4. **Project List.** Assist and advise the District in prioritizing, structuring and sequencing the Projects in the Program in the form of a master Project list, which shall include:

1.4.1. Preliminary Project programming & scoping
1.4.2. Community Engagement (town hall meetings, site meetings, etc.)
1.4.3. Master priorities development
1.4.4. General Program strategies
1.4.5. Recommendations on assignment of like scope to similar Projects
1.4.6. Recommendations on organizing Projects to achieve schedule goals
1.4.7. Recommendations on logical bidding structure based on industry knowledge
1.4.8. Recommendations on organizing Projects to meet logistics goals (e.g., relocation requirements or restrictions)
1.4.9. Advise the District regarding project delivery systems and bid packaging strategies.

1.5. **Schedules.** Prepare and update as required, a master Program schedule incorporating design periods, approval periods, and construction periods for all Projects identified in the Program, and perform the following:

1.5.1. Monitor and revise, as required, Project schedules relative to overall master Program schedule.
1.5.2. Include significant milestones on each schedule.
1.5.3. Provide monthly reports and updates to the District, including schedule projections and analysis.

1.6. **Budgets.** All budgets must be in accordance with and tied to the District's accounting codes. In addition to the budget requirements indicated in the Agreement itself, Consultant shall prepare and update as required a Program Budget, Construction Budgets for each Project, and Construction Cost Budgets for each Project, which shall include:

1.6.1. All anticipated expenditures

1.6.2. Detailed cash flow projections

1.6.3. Resource identification (bond funds and other fund sources)

1.6.4. State matching grant eligibility profile by site

1.6.5. Individual preliminary Project costs

1.6.6. Interim housing

1.6.7. Provide monthly reports and updates to the District.

1.7. **Contract Management**. Assist the District and its legal counsel in the following:

1.7.1. The development of District standard contract agreements for use in assigning scope of work for each Project within the Program.

1.7.2. The assignment of tasks to architectural and engineering firms for each Project, including issuing request for proposals, contract negotiations, preparation of the contract agreement, and assisting the District during the public contract approval process.

1.7.3. The procurement of required consultants, such as testing and inspection companies and Division of State Architect project inspectors, to support the Projects, including issuing request for proposals, contract negotiations, preparation of the contract agreement, and assisting the District during the public contract approval process.

1.7.4. The review contracting strategies with District for each Project to mitigate impacts, costs and delays, and to maximize competition.

1.7.5. The preparation of the "front end" documents, including Divisions 0 and 1, supplemental conditions and a pre-bid construction schedule. Coordinate the incorporation of Divisions Sections 2 – 49 into specifications as provided by designers (see below).

1.8. **Cost-Savings.** Identify potential cost-saving approaches to construction such as phasing and grouping of Projects.

1.9. **Cooperation.** Cooperate with other professionals employed by the District for the design, coordination or management of other work related to the Projects, including the persons or state agencies responsible for operation of a labor compliance program, if applicable.

1.10. **Environmental.** Provide direction and planning to ensure all Projects comply with applicable environmental requirements such as those emanating from the Environmental Protection Agency (EPA), Cal/EPA, the California Environmental Quality Act ("CEQA"), Air Quality

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Management District and State of California and Regional Water Quality Control Board laws, regulations and rules.

1.11. **Contract Documents.** Assist the District in reviewing and revising bid documents, general requirements, Division 1 documents, technical specifications, lease-leaseback documents, and other related forms.

1.12. **Meetings.**

1.12.1. Chair, conduct and take minutes of periodic meetings between District and its design professional(s). Consultant shall keep meeting minutes to document comments generated in these meetings, but shall not be responsible for analyzing design issues raised in said meetings.

1.12.2. Attend each meeting of the District's Board of Education, and to provide updates at each meeting.

1.12.3. Attend District property committee meetings, site committee meetings, Citizen Bond Oversight Committee meetings, planning workshops, or other Project-related meetings within the community.

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

1.14. **Minutes.** Maintain minutes and a log of all meetings, site visits or discussions held in conjunction with the work of the Program, 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 Program documentation.

1.15. **Communication System.** Develop a Management Information System (MIS) to assist in establishing communications between the District, Consultant, design professional(s), contractor(s) and other parties on each Project. In developing the MIS, the Consultant 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. This shall include:

1.15.1. District-approved procedures, forms, and reporting requirements for the Project.

1.15.2. A communications procedure for the Project that allows for decision making at appropriate levels of responsibility and accountability.

1.16. **On-Going Updates.** Monitor and advise the District as to all material developments in each Project. Consultant shall develop and implement with District approval reporting methods for schedules, cost and budget status, and projections for each Project. The Consultant shall provide District administration and the Board of Trustees updates of the Program, Projects, and performance of the Consultant's Services. Additionally, Consultant shall be the focal point of all communication between District and its Design Team.

1.17. **Agency Documentation.** Coordinate transmittal of documents to regulatory agencies for review and shall advise the District of potential problems in completion of such reviews.

1.18. **Pictures.** 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.

1.19. **Public Records Act.** Coordinate the reply and response to any California Public Records Act requests received related to a Project or the Program and coordinating, if directed by the District, with the District's legal counsel.

1.20. **Overall Assistance.** Provide overall Program Management assistance to the District in its efforts to implement the Program, Projects, agreements, products, procedures, and reporting.

1.21. **Excluded Services.** Consultant is NOT 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 Consultant shall coordinate and integrate its work with any scopes of work or services provided by District related to the following:

1.21.1. Ground contamination or hazardous material analysis.

1.21.2. Any asbestos testing, design or abatement.

1.21.3. Compliance with the CEQA, except that Consultant shall provide current information for use in CEQA compliance documents.

1.21.4. Historical significance report.

1.21.5. Preparing soils investigation.

1.21.6. Preparing geotechnical hazard report.

1.21.7. Preparing topographic survey, including utility locating services.

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

1.21.9. Preparing as-built documentation from previous construction projects.

1.22. **Project Design/Programming**

1.22.1. Prepare and attend meetings with District administrative staff and site staff to review Project specific programming and design of each project, at each school site.

1.22.2. Monitor preliminary cost models/estimates from Architects for alignment with the Program Budget, each Construction Budget, and each Construction Cost Budget.

1.22.3. Monitor preliminary Project schedules from Architects relative to overall master schedule.

1.22.4. Coordinate other direct District consultants performing the following services:

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1.22.4.1. Surveying
1.22.4.2. Soils/geotechnical
1.22.4.3. CEQA/environmental
1.22.4.4. Hazardous materials inventory, testing and project specifications.

1.22.5. Perform pre-construction services and pre-qualification services for (including surveying, soils/geotechnical, DSA inspectors, testing agencies, CEQA/environmental consultants, etc.), including performance of the following:

1.22.5.1. Coordination with legal counsel
1.22.5.2. Edit pre-qualification documents
1.22.5.3. Distribute pre-qualification documents
1.22.5.4. Conduct reference checks
1.22.5.5. Score all contractors and forward recommendation to District for Board approval.

1.23. **Design Phase Management**

1.23.1. Coordinate and conduct a project kick-off meeting for each project, attended by the designer, District and others, as necessary, to review the scope of work, master schedule, project schedule, budget(s) and the MIS.

1.23.2. Monitor and document the designer's compliance with the scope of work schedule, budget and MIS and coordinate the flow of information between the District, designer and others, as necessary, including meeting minutes and budget and schedule updates.

1.23.3. Conduct periodic meetings attended by District, designer and others for exchange of project information and design progress. Prepare and distribute detailed meeting minutes to the District, designer and others, as necessary.

1.23.4. Review design documents and make recommendations to the District and designer as to scope of work, bid-ability, constructability, scheduling and timing of construction, as to separation of the project into contracts for various categories of the work and for compliance with the District's Design Standards. The Consultant will be responsible to coordinate with the Construction Manager and the design teams. Such review shall be provided to the District and designer in writing.

1.23.5. Coordinate and expedite the District's design reviews by compiling and conveying the District's review comments to the designer.

1.23.6. Coordinate the incorporation of the technical specifications (traditionally Divisions 2 – 17) into the contract documents.

1.23.7. Assist the District in determining and managing phasing or temporary housing needs, including move management for each project.

1.23.8. Review estimates of construction cost for each submittal of design drawings and specifications from the designer. Consultant's review of the estimate for each submittal shall be accompanied by a report to the District and designer identifying variances from the Program Budget, each Construction Budget, and each Construction Cost Budget. The Consultant shall facilitate decisions by the District and designer when changes to the design are required to remain within the Program Budget, each Construction Budget, and each Construction Cost Budget.

1.23.9. Make recommendations to the District concerning revisions to the project scope and/or the Program Budget, each Construction Budget, and each Construction Cost Budget that may result from design changes and/or market conditions.

1.23.10. Make recommendations on value engineering and to the District and designer on major construction components, including cost evaluations of alternative materials and systems.

1.24. **Bid/Solicitation and Award Phase**

1.24.1. Assist the District in developing lists of possible bidders or respondents to solicitations, and in prequalifying bidders if prequalification is permitted by the District. This service shall include the following: preparation and distribution of prequalification questionnaires; receiving and analyzing completed questionnaires; interviewing possible bidders or respondents to solicitations, bonding agents and financial institutions; and preparing recommendations for the District. The Consultant shall prepare a bidders and respondents to solicitations list for each package for approval by District.

1.24.2. Assist the District, designer(s), and Construction Manager conducting a pre-bid or pre-solicitation conference to explain the project requirements to the bidders and respondents to solicitations, including scheduling, cost control, access, interfaces and administrative requirements.

1.24.3. Assist in oversight of bid, RFQ, RFP and/or award activities.

1.25. **Construction Phase**

1.25.1. Oversee and manage any contracted-for construction manager(s) with the implementation of their contractual duties.

1.25.2. The Consultant shall develop and implement procedures for the review and processing of applications by contractors for progress and final payments.

1.26. **Closeout Phase**

1.26.1. Ensure that all designer(s), construction manager(s), project inspector(s), special inspector(s), testing agency(s), contractor(s), and all other consultants and builders on each construction project in the Program completes all necessary tasks for final closeout of that construction project including, without limitation, all DSA verified reports, warranties, guarantees, operations & maintenance manuals, as-built drawings, record drawings, and other documents required under the applicable contracts.

1.27. **On-Going Program Management Services**

1.27.1. Perform Program master schedule updates as necessary over the course of the Program.

1.27.2. Perform Program master budget updates as necessary over the course of the Program.

1.27.3. Coordinate State agency services, including coordination with the following State agencies:

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1.27.3.1. California Department of General Services, Division of the State Architect ("DSA")
1.27.3.2. California Department of Education ("CDE")
1.27.3.3. California Department of General Services, Office of Public School Construction ("OPSC")
1.27.3.4. California Department of General Services, State Allocation Board ("SAB").

1.27.4. Develop, submit and track all OPSC grant applications for the School Facility Program ("SFP").

1.27.5. Develop, submit and manage grant applications for any possibly eligible State grant or fund.

1.27.6. Coordinate alternate project delivery methods, including but not limited to the following possible alternatives:

1.27.6.1. Multiple prime contracting
1.27.6.2. Lease-lease back contracting.

1.27.7. Customize cost database for all cost tracking.

1.27.8. Perform on-going accounting coordination with District business office staff, including coordination of the following:

1.27.8.1. Invoice processing of all invoices associated with the Program entered through databases and forwarded to District
1.27.8.2. Purchase order requests
1.27.8.3. Cost code coordination with District accounting staff
1.27.8.4. Miscellaneous reporting.

1.27.9. Coordinate Asbestos Hazardous Emergency Response Act ("AHERA") asbestos management reporting (six month & triennial).

1.27.10. Prepare, attend and manage Regular weekly (or other frequency as specified by the District) Program meetings with District's Facilities Director. The Consultant will prepare, at a minimum, the following for the regular Program meetings:

1.27.10.1. Status of projects
1.27.10.2. Status of the Program Budget, each Construction Budget, and each Construction Cost Budget
1.27.10.3. Status of master Program schedule and each Project schedule.

1.27.11. Prepare, attend and manage monthly owners meetings with District's Superintendent and Board of Trustees subcommittees.

1.27.12. Perform Bond Oversight Committee support, including accounting, reporting, and attending all quarterly meetings.

1.27.13. Provide updates on the status of the Program at monthly Board of Trustees Meetings, and any applicable special meeting of the Board of Trustees.

1.27.14. Coordinate, manage and attend all community engagement meetings and meetings regarding stakeholder input. These meetings include the following:

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1.27.14.1. Miscellaneous town hall meetings
1.27.14.2. Design workshop meetings with parent-teacher organizations, Parent Teacher Associations ("PTAs"), school staff, students and other user groups

1.27.15. Receive, manage, send and track all Public Records Requests.

1.28. **Program Communications**

1.28.1. Provide content to District's Facilities Director for Program website.

1.28.2. Provide content to District's Facilities Director for Program advertising and community information (newsletters, flyers, etc.)

1.29. **Project Logistics Services**

1.29.1. Develop classroom relocation maps.

1.29.2. Develop, assist and advise moving/relocation strategies.

1.29.3. Prepare and attend meetings with site administration and teachers for each phase of modernization moving, and present moving instructions and explain move day tactics.

1.29.4. Develop, attend and manage teacher packing orientation and instructions.

1.29.5. Prepare and update moving schedules.

1.29.6. Perform moving scope coordination.

1.29.7. Coordinate with moving company for pre-move scoping and final pricing adjustments.

1.29.8. Perform on-site coordination the day of the moves (weekends, holidays and after hours).

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2. CONSTRUCTION MANAGEMENT SERVICES. Consultant shall provide these construction management services.

2.1 **General Construction Management Services**

2.1.1 Provide overall coordination of the Project; transmitting information to the District and Project team on general aspects of the Project, including progress reporting, design review, dispute resolution, and documentation. Communications from the contractor(s) to District and Project Design Team shall be through the Consultant. The Consultant shall receive simultaneous copies of all written communications from the District or the Project Design Team to the contractor(s).

2.1.2 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).

2.1.3 Provide and maintain a management team on the Project sites.

2.2 **Preconstruction Phase Services**

2.2.1 **Value Engineering.** Provide value engineering at the 100% Design Development Phase and the 50% Construction Document Phase. This evaluation 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 Consultant 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 Consultant shall provide to the District value engineering recommendations and cost/benefit analysis of those recommendations.

2.2.2 The Consultant shall organize and conduct a value engineering workshop for the Project.

2.2.3 The Consultant shall invite the Design Team to participate in the workshop.

2.2.4 Prior to the value engineering workshop, the Consultant and the Design Team will provide all participants with a preliminary list of value engineering items for discussion and order of magnitude estimates of cost both for design and construction.

2.2.5 The workshop will consist of an initial Project design review, research of alternative solutions, and evaluations of alternatives. The workshop will conclude with a review of design and construction costs, benefits of various items selected, and selection of items to be incorporated into the Project design.

2.2.6 The Consultant will incorporate the workshop findings into one complete report for submittal to the District and Design Team.

2.2.7 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.

2.2.8 **Constructability Reviews.** Perform constructability reviews and site verification of the Project at the 100% Design Development Phase and at 90% Construction Documents. The

Consultant shall review the design documents for clarity, consistency, constructability and coordination. The results of the review shall be provided in writing and as notations on the documents to the District. The Consultant shall also make recommendations to the District with respect to constructability, construction cost sequence of construction, construction duration and separation of the contracts for various projects into categories of the work and separate bid trade packages. However, the Consultant is not responsible for providing, nor does the Consultant control, the Project design or the contents of the design documents. The Consultant'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 Consultant's work described in this paragraph and the Design Team members remains solely responsible for the contents of design drawings and design documents.

2.2.9 Develop master bid/award schedule(s) including construction milestones for the Project through the completion of construction, as directed by District, in coordination with the Design Team and advise and consult with District. Consultant shall review and approve contractor(s)' schedules, but shall not dictate any contractor(s)' means and/or methods of performance.

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

2.2.11 Consultant shall fully comply with the requirements related to the Construction Cost Budget and the Construction Budget indicated in the Agreement.

2.2.12 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 monthly progress reports to the District regarding the schedule for the Project.

2.2.13 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, Consultant 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.

2.2.14 Attend all planning, programming and master site planning meetings relating to the Project.

2.2.15 Provide updated cost estimates for the Project at the 100% Design Development ,50% Construction Documents Phase, and the 90% or 100% Construction Document Phase as directed by District; coordinate with the Design Team and reconcile cost estimates with Design Team's estimates.

2.2.16 Advise District regarding "green building" technology and lifecycle costing, including design review for adherence to Collaborative for High Performance Schools.

2.3 **Pre-Bid Phase Services**

2.3.1 Review and revise the master schedule and the construction milestone schedule for the Project.

2.3.2 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.

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

2.4 **Bidding Phase Services**

2.4.1 **Bidder List.** Prepare a bidders list for each bid or RFP package for approval by District. Conduct a telephonic and correspondence campaign to attempt to increase interest among qualified bidders.

2.4.2 **Prequalification.** Assist the District in pre-qualifying bidders if prequalification is desired by the District. This service shall include the following:

2.4.3 Preparation and distribution of prequalification questionnaires;

2.4.4 Receiving and analyzing completed questionnaires;

2.4.5 Interviewing possible bidders, bonding agents and financial institutions; and

2.4.6 Preparing recommendations for the District.

2.4.7 **Advertisement.** Assist the District in preparing and placing notices and advertisements to solicit bids for the Projects.

2.4.8 Coordinate the delivery of bid documents to the bidders.

2.4.9 Conduct pre-bid conferences to familiarize bidders with the bidding documents, and any special systems, materials or methods and with Project procedures. Receive questions from bidders, referring questions to the Design Team and District as required. Coordinate with the Design Team to respond to bidder questions by addenda.

2.4.10 Prepare an estimate of costs for all addenda and submit the estimate to the District for approval.

2.4.11 Prepare bid analyses and advise District on compliance of bidders with District requirements and bid requirements. Report and recommend to District after review and evaluation. Make recommendations to District for prequalification of bidders and award of contracts or rejection of bids.

2.4.12 Conduct pre-award conferences with successful bidders.

2.5 **Construction Phase Services**

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

2.5.2 Oversee, administer and manage the implementation of the construction contracts.

2.5.3 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.

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

2.5.5 The Consultant shall comply with, and ensure that all contractors and their subcontractors and Design Team and their sub-consultants comply with all mitigation measures required by the District's compliance with the California Environmental Quality Act ("CEQA"), 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.

2.5.6 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**.** Consultant expressly agrees to verify that the specifications are met, observed, performed, and followed in accordance with the professional standards of care for construction management. Consultant shall not, however, be responsible for directing construction contractor(s)' means and methods.

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

2.5.8 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.

2.5.9 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. Consultant 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 so conform, Consultant will take appropriate measures to secure compliance, subject to District approval.

2.5.10 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. Consultant shall incorporate construction contractor(s)' construction schedule updates and revisions into the Project construction schedule.

2.5.11 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.

2.5.12 The Consultant 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 Consultant shall provide to the Design Team and the District copies of these authorizations.

2.5.13 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.

2.5.14 The Consultant shall review the Contractor(s)' Safety Program submittals and review and document the implementation of the Contractor(s)' Safety Program. The Consultant 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 Consultant nor the District shall be responsible for or have any liability for contractors(s) failure to provide, comply with or enforce said safety programs.

2.5.15 Record the progress of the Project by a daily log.

2.5.16 Monitor ongoing Project costs to verify that projected costs do not exceed approved master Program budget, the Construction Budget, and Construction Cost Budget and provide the District timely notice of any potential increase in costs in excess of approved budgets provided to Consultant.

2.5.17 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.

2.5.18 Maintain a change order log for the Project and implement procedures to expedite processing of change orders.

2.5.19 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.

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

2.5.21 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. 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.

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

2.5.23 Accepted industry standards;

2.5.24 Applicable laws, rules, or ordinances; and the design documents and Contract Documents;

2.5.25 Where the work of a Construction contractor does not conform as set forth above, Consultant shall, with the input of the Design Team:

2.5.26 Notify the District of any non-conforming work observed by the Consultant;

2.5.27 Reject the non-conforming work; and

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

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

2.5.30 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.

2.5.31 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.

2.5.32 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.

2.5.33 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.

2.5.34 **Claims and Stop Payment Notices.** Consultant shall receive and track all of the following and shall immediately notify the District and, if directed by the District, the District's legal counsel, of these items:

2.5.34.1 Preliminary notices

2.5.34.2 Stop notices,

2.5.34.3 Stop payment notices,

2.5.34.4 Payment bond claims,

2.5.34.5 Disputed contractor claims of any type including, without limitation, claims of design errors/omissions, extra compensation, extra time, etc.

2.6 **Project Completion Services**

2.6.1 The Consultant shall observe, with District's maintenance personnel, the construction contractor's check-outs of utilities, operational systems and equipment, and start-up and

testing. The Consultant 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.

2.6.2 At the punch list phase of the Project or designated portions thereof, the Consultant shall, in consultation with the Architect(s), the Design Team and PI, 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 Consultant shall provide this list to the construction contractor(s). The Consultant shall coordinate construction contractors' performance and completion of punch list work. The Consultant shall review the completed punch list work with the District, the Architect(s), the Design Team and PI. The Consultant shall ensure, with input from these entities, that the completed punch list work complies with applicable provisions of the Construction contract(s).

2.6.3 The Consultant shall determine, with the District, the Architect(s), the Design Team and PI, when the Project or designated portions thereof are complete.

2.6.4 The Consultant shall conduct, with the District, the Architect(s), the Design Team and PI, final inspections of the Project or designated portions thereof. The Consultant shall notify District of final completion.

2.6.5 The Consultant shall consult with the District, the Architect(s), the Design Team and PI and shall determine when the Project and the contractor's work are finally completed. The Consultant 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.

2.7 **Final Documents Services**

2.7.1 The Consultant shall review, monitor and approve all as built drawings, maintenance and operations manuals, 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. The Consultant 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.

2.7.2 The Consultant 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.

2.8 **Warranty**

The Consultant shall implement a Warranty Inspection and Warranty Work procedure that all contractors are to follow. The procedure shall include a twelve (12) month call back period and a final warranty inspection eleven (11) months after Project completion to inspect the Project and identify any outstanding warranty work.

2.9 **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 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. 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.

FORM

EXHIBIT "B"
CRITERIA AND BILLING FOR EXTRA SERVICES FOR EXTRA SERVICES

[THESE TASKS WILL BE "EXTRA SERVICES" FOR ANY HOURLY / T&M FORM OF COMPENSATION]

The following Extra Services to this Agreement shall be performed by Consultant 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 Consultant or where the Consultant 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.

FORM

EXHIBIT "C"
SCHEDULE OF WORK

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

FORM

EXHIBIT "D"
FEE SCHEDULE

EXHIBIT "B"

PAYMENT PROVISIONS
AND
CRITERIA AND BILLING FOR EXTRA SERVICES

Compensation

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 District Office, offices, per diem expenses, printing, providing, or shipping of deliverables in the quantities set forth in **Exhibit "A."**

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 ("Fee Schedule").

[MONTHLY FEE OPTION]

STANDARD FEE SCHEDULE

Effective January 1, 2017
2017 Hourly Rates
Principals/Program Manager $175.00
Senior Project/Construction Manager $155.00
Project Manager/Superintendent $145.00
Estimators/Schedulers/Plan Reviewers $135.00
Project Engineer $ 110.00
Project Coordinator $ 95.00
Contract Administrator $ 75.00
Administrative Assistant $ 65.00
Clerical Support $ 55.00
Aforementioned rates include all taxes, insurance, health and welfare benefits, overhead and profit, computers, cellular phones and vehicles.
Annual fee increases will be based on data provided by the Bureau of Labor Statistics, Consumer Price Index.

Method of Payment

1. Consultant shall submit monthly invoices on a form and in the format approved by the District. Consultant shall submit these invoices in duplicate to the District via the District's authorized representative.

2. Consultant shall submit to District on a monthly basis documentation showing proof that payments were made to his/her sub-consultants.

3. 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.

Payment for Extra Services

The following Extra Services to the Agreement shall be performed by Consultant if needed and if authorized or requested by the District:

1. Providing deliverables or other items in excess of the number indicated in **Exhibit "A."** Before preparing, providing, sending, or invoicing for extra deliverables, Consultant shall inform the District that expected deliverables may be in excess of the number indicated in **Exhibit "A,"** so that District can procure the additional deliverables itself or direct Consultant to procure the deliverables at District's expense or on District's account at a specific vendor.

2. Providing services as directed by the District that are not part of the Services of this Agreement.

3. Providing services as an expert and/or witness for the District in any mediation, arbitration, and/or trial in which the Consultant is (1) not a party, and (2) did not in any way cause the dispute that is being adjudicated.

4. 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.

Job Title	**Hourly Rate**
Principal in Charge	$175.00
Senior Project/Construction Manager	$155.00
Project Manager/Superintendent	$145.00
Estimators/Schedulers/Plan Reviewers	$135.00
Project Engineer	$110.00
Project Coordinator	$95.00
Contract Administrator	$75.00
Administrative Assistant	$65.00
Clerical Support	$55.00

The mark-up on any approved item of Extra Services shall not exceed five percent (5%).

FORM

EXHIBIT "E"
CERTIFICATIONS
FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Independent Consultant Agreement for Professional Services ("Agreement"):

☐ X [**TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.**] Consultant's employees and Subconsultants will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Consultant's employees and Subconsultants so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Consultant for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 (c))

Date: _____
District Representative's Name and Title: _____
Signature: _____

☐ The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Consultant's services under this Agreement and Consultant certifies its compliance with these provisions as follows: "*Consultant certifies that the Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Consultant's employees, Subconsultants, subcontractors, agents, and Subconsultants' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant, who may have contact with District pupils in the course of providing services pursuant to the Agreement, 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 all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto*."

☐ Consultant's services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:

_____ The installation of a physical barrier at the worksite to limit contact with pupils.
_____ Continual supervision and monitoring of all Consultant's on-site employees of Consultant by an employee of Consultant, _____, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.
_____ Surveillance of Employees by District personnel. [**TO BE COMPLETED BY DISTRICT**]
Date: _____
District Representative's Name and Title: _____
Signature: _____

[TO BE COMPLETED BY CONSULTANT] I am a representative of the Consultant entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant.

Date: _____
Name of Consultant or Company: _____
Signature: _____
Print Name and Title: _____