

<b>Board Office Use: Legislative File Info.</b>	
File ID Number	18-1195
Introduction Date	6-13-2018
Enactment Number	18-1054
Enactment Date	6/24/18 os



OAKLAND UNIFIED  
SCHOOL DISTRICT  
Community Schools. Thriving Students.

# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent and Secretary, Board of Education  
Timothy White, Deputy Chief, Facilities Planning and Management

**Board Meeting Date** June 13, 2018

**Subject** Independent Consultant Agreement less than \$90,200 - Syska Hennessy - Fremont New Construction Project

**Action Requested** Approval by the Board of Education of an Independent Consultant Agreement less than \$90,200 between the District and Syska Hennessy, San Francisco CA., for the latter to provide elevator consulting and engineering services for (1) new passenger elevator, in a newly-constructed hoist way, to facilitate accessibility between the first and second levels of the existing school, in conjunction with the Fremont New Construction Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing June 14, 2018 and concluding no later than December 20, 2020, in an amount not-to exceed \$13,250.00.

**Discussion** Vender to provide consulting and engineering design services for elevator at school site.

**LBP** (Local Business Participation Percentage) 00.00%

**Recommendation** Approval by the Board of Education of an Independent Consultant Agreement less than \$90,200 between the District and Syska Hennessy, San Francisco CA., for the latter to provide elevator consulting and engineering services for (1) new passenger elevator, in a newly-constructed hoist way, to facilitate accessibility between the first and second levels of the existing school, in conjunction with the Fremont New Construction Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing June 14, 2018 and concluding no later than December 20, 2020, in an amount not-to exceed \$13,250.00.

**Fiscal Impact** Fund 21, Measure J

**Attachments**

- Independent Consultant Agreement including scope of work
- Consultant Proposal
- Certificate of Insurance



**CONTRACT JUSTIFICATION FORM**  
**This Form Shall Be Submitted to the Board Office**  
**With Every Consent Agenda Contract.**

Legislative File ID No. 18-1195

Department: Facilities Planning and Management

Vendor Name: Syska Hennessy

Project Name: Fremont New Construction Project No.: 13158

Contract Term: Intended Start: 6/7/2018 Intended End: 12/20/2020

Annual (if annual contract) or Total (if multi-year agreement) Cost: \$13,250.00

Approved by: Tadashi Nakadegawa

Is Vendor a local Oakland Business or have they meet the requirements of the

Local Business Policy?  Yes (No if Unchecked)

How was this Vendor selected?

They are the District's elevator consultant.

Summarize the services this Vendor will be providing.

To provide elevator consulting and engineering services for 1 new passenger elevator, in a newly-constructed hoist way, to facilitate accessibility between the first and second levels of this existing school structure.

An Owner's contingency of \$3,000 has been added.

Was this contract competitively bid?  Yes (No if Unchecked)

If No, please answer the following:

1) How did you determine the price is competitive?

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA Exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$90,200 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternative energy supply sources)
- Emergency** contracts
- Technology** contracts
  - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$86,000 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
  - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
  - Western States Contracting Alliance Contracts (WSCA)
  - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception**

3)  **Not Applicable - no exception - Project was competitively bid**



**INDEPENDENT CONSULTANT**  
**Less Than \$90,200**

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the **3rd day of May 2018**, by and between the **Oakland Unified School District** ("District") and **Syska Hennessy Group** ("Consultant"), (together, "Parties").

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

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

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

**NOW, THEREFORE**, the Parties agree as follows:

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

Scope of Services includes to provide elevator consulting and engineering services for 1 new passenger elevator, in a newly-constructed hoist way, to facilitate accessibility between the first and second levels of this existing school structure.

2. **Term.** Consultant shall commence providing Services under this Agreement on **June 14, 2018**, and will diligently perform as required and complete performance by **December 20, 2020**, unless this Agreement is terminated and/or otherwise cancelled prior to that time. This Agreement may be extended upon mutual approval of both parties in writing on an annual basis to the extent permissible under applicable law.
3. **Submittal of Documents.** The Consultant shall not commence the Services under this Contract until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<input checked="" type="checkbox"/> Signed Agreement	<input checked="" type="checkbox"/> W-9 Form
<input checked="" type="checkbox"/> Insurance Certificates & Endorsements	<input checked="" type="checkbox"/> Workers' Compensation Certificate
<input checked="" type="checkbox"/> Debarment Certification	Other: _____
<input checked="" type="checkbox"/> Fingerprinting/Criminal Background Investigation Certification	

4. **Compensation.** District agrees to pay Consultant for Services satisfactorily rendered pursuant to this Agreement, a fixed fee of **THIRTEEN THOUSAND, TWO HUNDRED FIFTY NO/100 Dollars (\$13,250.00)**, paid monthly in proportion to Services performed.
  - 4.1. District shall pay Consultant for all undisputed amounts in installment payments within thirty (30) days after the Consultant submits an invoice to the District for Services actually completed and after the District's written approval of the Services, or the portion of the Services for which payment is to be made (such approval not to be unreasonably withheld or delayed).



- 4.2. Any disputed invoiced amount which cannot be resolved in good faith between the Parties within fifteen (15) business days shall be resolved in accordance with Section 25 below.
5. **Expenses.** Expenses will not be charged for Consultant's performance of these Services.
6. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.
7. **Local, Small Local and Small Local Resident Business Enterprise (L/SL/SLRBE) Program:** Consultant shall comply with the requirements of District's L/SL/SLRBE Program, as applicable, which may require a fifty percent (50%) mandatory minimum local participation requirement in the performance of this Agreement. A copy of the District's Local Business Participation Policy can be obtained on the District's website, at [www.ousd.k12.ca.us](http://www.ousd.k12.ca.us), under District Services, Facilities Planning & Management Department, Bids and Requests for Proposals.
8. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees. In the performance of the Services herein contemplated, Consultant shall have the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.
9. **Performance of Services / Standard of Care.**
- 9.1. **Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts. Consultant's Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.
- 9.1.1. Consultant hereby represents that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of the Agreement.
- 9.1.2. Consultant shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Consultant understands that the District relies upon such professional quality, accuracy, completeness, and coordination by Consultant in performing the Services.
- 9.1.3. Consultant shall ensure that any individual performing work under the Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the work assigned to them.
- 9.1.4. Consultant shall carefully study and compare all documents, findings, and other instructions and shall at once report to District, in writing, any error, inconsistency, or



omission that Consultant or its employees may discover. Consultant shall use professional efforts in identifying any errors, inconsistencies, or omissions.

9.1.5. Any representations, recommendations, opinions or conclusions relating to the Services provided by Consultant must be made in writing by duly authorized representatives of Consultant.

9.2. **Meetings.** Consultant and District agree to participate in regular meetings to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.

9.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.

10. **Originality of Services.** Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.

11. **Copyright/Trademark/Patent.** Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District (specifically excluding any underlying pre-existing intellectual property). District may, with Consultant's prior written consent, use Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

## 12. Termination.

12.1. **For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three (3) calendar days after the day of mailing, whichever is sooner.

12.2. **For Convenience by Consultant.** Consultant may, upon sixty (60) days notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Consultant for services satisfactorily rendered to the date of termination. Written notice by Consultant shall be sufficient to stop further performance of services to District. Consultant acknowledges that this sixty (60) day notice period is acceptable so that the District can attempt to procure the Services from another source.

12.3. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

12.3.1. material violation of this Agreement by the Consultant; or

12.3.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or



- 12.3.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and, unless within three (3) calendar days after that notice the condition or violation shall cease or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required Services from another Consultant. If the expense, fees, and/or costs to the District exceeds the cost of providing the Services pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

- 12.4. Upon termination, Consultant shall provide the District with all documents produced maintained or collected by Consultant pursuant to this Agreement, whether or not such documents are final or draft documents.

**13. Indemnification.** To the furthest extent permitted by California law, Consultant shall indemnify, and hold harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("the Indemnified Parties") from any and all claims, arising out of, pertaining to or relating to the negligence, recklessness, errors or omissions, or willful misconduct of Consultant. Consultant shall, to the fullest extent permitted by California law, defend the Indemnified Parties at Consultant's own expense, including attorneys' fees and costs, from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant. The District shall have the right to accept or reject any legal representation that Consultant proposes to defend the indemnified parties.

**14. Insurance.**

- 14.1. Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

14.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that insure against all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from Consultant's performance of any portion of the Services. (Form CG 0001 and CA 0001)

14.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

14.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Consultant's profession.



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

14.2. **Proof of Carriage of Insurance.** Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

14.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

14.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

14.2.3. An endorsement stating that the District and its Governing Board, agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District. An endorsement shall also state that there shall be a waiver of any subrogation.

14.2.4. All policies except the Professional Liability, Workers' Compensation, and Employers' Liability Insurance shall be written on an occurrence form.

14.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

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

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



17. **Certificates/Permits/Licenses/Registration.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this agreement.
18. **Safety and Security.** Consultant is responsible for maintaining safety in the performance of this Agreement. Consultant shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
19. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
20. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status and therefore the Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).
21. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing of any portion of the Services. Although District has determined that fingerprinting is not applicable to this Agreement, Consultant expressly acknowledges that the following conditions shall apply to any work performed by Consultant and/or Consultant's employees on a school site:
  - 21.1. All site visits shall be arranged through the District;
  - 21.2. Consultant and Consultant's employees shall inform District of their proposed activities and location at the school site, allowing District time to arrange site visits without a disruption to the educational process;
  - 21.3. Consultant and/or Consultant's employees shall check in with the school office each day immediately upon arriving at the school site;
  - 21.4. Once at such location, Consultant and Consultant's employees shall not change locations without contacting the District;
  - 21.5. Consultant and Consultant's employees shall not use student restroom facilities; and
  - 21.6. If Consultant and Consultant's employees find themselves alone with a student, Consultant and Consultant's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.
22. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services



covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.

23. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
24. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any manner which is permissible under the law. The District's evaluation may include, without limitation:
- 24.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
- 24.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
25. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
26. **Disputes:** In the event of a dispute between the parties as to performance of the Services, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute in good faith. Pending resolution of the dispute, Consultant agrees it will neither rescind the Agreement nor stop the performance of the Services, but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute. Disputes may be determined by mediation if mutually agreeable, otherwise by litigation. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Consultant shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Consultant's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Consultant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.
27. **Confidentiality.** The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
28. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:



Oakland Unified School District  
955 High Street  
Oakland, CA 94601  
Tel: 510-535-7038; Fax: 510-535-7082  
ATTN: Tadashi Nakadegawa

Syska Hennessy Group  
425 California Street, Suite 700  
San Francisco, CA 94104  
Tel: 415-288-9061  
ATTN: Edwin Essary


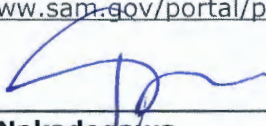
Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days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

29. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
30. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administration offices are located.
31. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
32. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
33. **Incorporation of Recitals and Exhibit.** The Recitals and exhibit attached hereto are hereby incorporated herein by reference.
34. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
35. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
36. **Attorney's Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
37. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
38. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

39. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.

40. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** The District certifies to the best of its knowledge and belief, that it and its officials: are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>



**Tadashi Nakadegawa**  
**Director of Facilities Planning & Management**

**[SIGNATURES ON NEXT PAGE]**



**IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below:**

**OAKLAND UNIFIED SCHOOL DISTRICT**

Aimee Eng 6/27/18  
Aimee Eng, President, Board of Education Date  
Kyla Johnson-Trammell 6/27/18  
Kyla Johnson-Trammell, Superintendent & Secretary, Board of Education Date  
Timothy White \_\_\_\_\_  
Timothy White, Deputy Chief, Facilities Planning and Management Date

**APPROVED AS TO FORM:**

Devin Rodoni 6/8/18  
OUSD Facilities Legal Counsel Date

**CONSULTANT**

[Signature] 11/18/2018  
Date

**Information regarding Consultant:**

Consultant: \_\_\_\_\_  
License No.: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-Mail: \_\_\_\_\_  
Type of Business Entity:  
\_\_\_\_ Individual  
\_\_\_\_ Sole Proprietorship  
\_\_\_\_ Partnership  
\_\_\_\_ Limited Partnership  
\_\_\_\_ Corporation, State: \_\_\_\_\_  
\_\_\_\_ Limited Liability Company  
\_\_\_\_ Other: \_\_\_\_\_

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

**WORKERS' COMPENSATION CERTIFICATION**

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

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

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

Date:

May 8, 2018

Proper Name of Consultant:

SYSKA HENNESSY Group, Inc

Signature:

[Handwritten Signature]

Print Name:

John R. Moran III

Title:

Senior Principal

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



**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

The undersigned is aware of and hereby certify that neither Syska Hennessy Group ("Consultant") nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Further, the undersigned agrees to include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts.

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

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal of the above named Consultant on the 21<sup>st</sup> day of May 2018 for the purposes of submission of this Agreement.

By:

  
Signature

John R. Moran III  
Typed or Printed Name

Senior Principal  
Title

**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"):

Consultant's employees 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 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: \_\_\_\_\_

District Representative's 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, subcontractors, agents, and subcontractors' 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.

Date: \_\_\_\_\_

District Representative's Name and Title: \_\_\_\_\_

District Representative's Signature: \_\_\_\_\_

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: May 8, 2018

Name of Consultant: SYSKA HENNESSY GROUP, INC.

Signature: [Handwritten Signature]

Print Name and Title: John R. Moran III, Senior Principal



**EXHIBIT "A"**  
**DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT**

**BASIC SCOPE OF SERVICES**

SYSKA HENNESSY

To provide elevator consulting and engineering services for 1 new passenger elevator, in a newly-constructed hoist way, to facilitate accessibility between the first and second levels of this existing school structure.



**SYSKA HENNESSY**  
**GROUP**

425 California Street, Suite 700 • San Francisco, CA 94104-2196 • 415.288.9066 • www.syska.com

May 18, 2018

Juanita Hunter, Administrative Assistant  
Facilities Planning & Management  
Oakland Unified School District  
955 High Street  
Oakland, CA 94601

Re: **OUSD Fremont School**  
**Elevator Consulting & Engineering Services**

Dear Ms. Hunter,  
John Moran is a Senior Principal at Syska Hennessy Group, Inc. and has corporate authority to sign the proposed agreement for our work related to the subject project.

Cordially,  
**SYSKA HENNESSY GROUP, INC.**

Edwin J. Essary  
Client Leader / Senior Associate





March 19, 2018

Amy Haedt, Project Manager  
Oakland Unified School District  
955 High Street  
Oakland, CA 94601

**EXHIBIT A**

Re: **OUSD Fremont School**  
**Elevator Consulting & Engineering Services**

Dear Ms. Haedt,

We are pleased to submit this Proposal for providing Elevator Consulting and Engineering Services for the Fremont School project in Oakland, CA.

The description of scope and services to be provided represents our understanding of the desired elevator consulting services. Our scope and fees for elevator consulting services are based on receiving typical design development drawings.

**I. SCOPE OF PROJECT**

The project, as we understand it, consists of one (1) new passenger elevator, in a newly-constructed hoistway, to facilitate accessibility between the first and second levels of this existing school structure.

**II. SCOPE OF ENGINEERING SERVICES**

1. Construction Documents

- a. Review Architect's construction documents related to vertical transportation equipment.
- b. Provide vertical transportation specifications using OUSD Master. The specification will include performance criteria and establish the quality of the equipment required. The specifications will be developed to ensure that equipment fits the established hoistway dimensions and meets the intent of the OUSD Master. Documents will be prepared to encourage competitive bidding and identify related work to be performed by other trades.
- c. Provide technical and code requirement support for architect's production of DSA submittal. Respond to DSA questions by telephone or in writing.

2. Bid Review

- a. Review and reconcile contract and procurement documents for scope, equipment requirements and identify potential conflicts or value engineering opportunities.
- b. Assist with selected vertical transportation system scope review (to ensure coverage by other trades) and
- c. Differentiate and assess competitive bids received, to identify advantages, address omissions or conflicts, recommend award and conduct subcontract negotiations, if requested.

3. Construction Administration

- a. Review relevant shop drawings submitted by the contractor for code and contract document compliance. Mark up drawings to ensure compliance with contract documents.
- b. Review and assist in the preparation of change orders, bulletins or addenda in documents as required.
- c. Respond to RFI's issued by the Contractor, Owner or Architect.

- d. Conduct one (1) final, post-inspection (by AHJ), on-site installation review to verify and document equipment performance and compliance with contract documents. Provide a written report covering the measured and subjective performance data and itemize any deficiencies.

**Note: Final inspection requires attendance/supervision of responsible elevator mechanic to provide safe access to elevator spaces; this cost is not included in SHG fees.**

- e. Establish substantial completion, final acceptance and warranty effective dates.
4. Work Not Included
- a. Development of traffic analysis, equipment requirements, base specifications, layout drawings or other design, construction or procurement documents.
  - b. Architectural component design and selection of finishes (cab, entrances, fixtures).
  - c. Other requested meetings involving travel, as related to design, construction administration or inspection services.
  - d. Interim Site Visits (Billed as Additional Services, with prior authorization)
    - 1) Conduct periodic installation reviews to determine that work is proceeding in accordance with the Contract Documents and in general conformity with the intent of the design concept.
    - 2) Provide written reports to include:
      - a) List items of nonconformity
      - b) Percentage of equipment and components on the site installed
      - c) Percentage of overall completion of individual or groups of elevators and escalators and other vertical/horizontal systems designed and specified under this agreement
      - d) Identify equipment or components not on the jobsite that could affect the installation schedule

**III. FEES AND PAYMENTS**

- 1. Fixed fee of Ten Thousand Two Hundred Fifty and no/100 Dollars (\$ 10,250.00)
- 2. Interim Payments

Payments to the engineer will be made on the basis of the status of completion of each phase as follows:

<b>Work &amp; Billing Phase</b>	<b>Fee</b>
<b>Construction Documents</b>	<b>\$ 5,250</b>
<b>BA</b>	<b>\$ 1,500</b>
<b>Construction Admin</b>	<b>\$ 3,500</b>
<b>Total</b>	<b>\$ 10,250</b>

- 3. Compensation for Additional Services

Where additional services are required, we will be paid the Engineers' standard billing rate of \$280.00 per hour for Principal, \$235.00 per hour for Project Manager and \$200.00 per hour for Senior Engineer.

- 4. Prompt Payment

- a. Delayed Payment Charges:

Invoices are payable when presented.



b. Right to Cease Work:

If payments are not received in accordance with the terms of this Agreement, Engineer may at his discretion and with fifteen days notice to The Client, without liability, cease work until payment is received.

c. Reduction or Setoff Payments:

Payments under this contract shall not be subject to reduction or setoff by reason of any claims against Engineer.

**IV. REIMBURSABLE EXPENSES**

We do not include nor anticipate any reimbursable expenses, based upon the stated scope of work. If directly related to and necessary for additional or revised scope, Engineer shall submit any such expenses for prior authorization and approval.

**V. GOVERNING LAW**

This Proposal shall be in all respects subject to and construed in accordance with the law of the State of California.

**VI. RELATIONSHIP BETWEEN THE PARTIES**

It is understood that the Engineer is an independent contractor and that its professional relationship with The Client shall terminate for this specific project when a final invoice is delivered to The Client and payment is made in full.

**VII. LIMITATION OF LIABILITY**

It is agreed that Engineer's liability to The Client (and to all construction contractors and subcontractors on the project) for Engineer's professional negligent acts, errors or omission, shall not exceed the total fees paid to the Engineer.

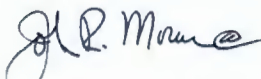
**VIII. TERMS AND CONDITIONS**

This proposal is issued subject to Engineer's standard terms and conditions, which are included as an attachment to this Proposal/Agreement, and are deemed as having been accepted by affixing the Client's signature in the space provided below.

Very truly yours,  
**SYSKA HENNESSY GROUP, INC.**



Edwin J. Essary  
Client Leader / Senior Associate



John R. Moran III  
Senior Principal

<p><b>ACCEPTED:</b></p> <p>Company: _____</p> <p>Authorized By: _____ Title: _____</p> <p>Signature: _____</p> <p>Date: _____</p>
---

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

Table with PRODUCER (Greyling Ins. Brokerage/EPIC) and INSURED (Syska Hennessy Group, Inc.) information. Includes CONTACT NAME (Carly Underwood), PHONE (770.552.4225), FAX (866.550.4082), and E-MAIL ADDRESS (carly.underwood@greyling.com). Lists INSURER(S) AFFORDING COVERAGE with NAIC #.

COVERAGES CERTIFICATE NUMBER: 18-18 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Main table listing insurance coverages: A COMMERCIAL GENERAL LIABILITY, A AUTOMOBILE LIABILITY, B UMBRELLA LIAB, C WORKERS COMPENSATION AND EMPLOYERS' LIABILITY, and D Professional Liab. Includes columns for INSR LTR, TYPE OF INSURANCE, POLICY NUMBER, POLICY EFF, POLICY EXP, and LIMITS.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) The District and its Governing Board, agents, representatives, employees, trustees, officers, consultants, and volunteers are named as Additional Insureds on the above referenced liability policies with the exception of workers compensation & professional liability where required by written contract.

Table with CERTIFICATE HOLDER (Oakland Unified School District) and CANCELLATION (SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.)



## DESCRIPTIONS (Continued from Page 1)

Waiver of Subrogation is applicable where required by written contract & allowed by law.

Should any of the above described policies be cancelled by the issuing insurer before the expiration date thereof, we will endeavor to provide 30 days' written notice (except 10 days for nonpayment of premium) to the Certificate Holder.



**SYSKA HENNESSY**  
**GROUP**

425 California Street, Suite 700 • San Francisco, CA 94104-2196 • 415.288.9066 • www.syska.com

May 18, 2018

Juanita Hunter, Administrative Assistant  
Facilities Planning & Management  
Oakland Unified School District  
955 High Street  
Oakland, CA 94601

Re: **OUSD Fremont School**  
**Elevator Consulting & Engineering Services**

Dear Ms. Hunter,  
John Moran is a Senior Principal at Syska Hennessy Group, Inc. and has corporate authority to sign the proposed agreement for our work related to the subject project.

Cordially,  
**SYSKA HENNESSY GROUP, INC.**

Edwin J. Essary  
Client Leader / Senior Associate



**OAKLAND UNIFIED SCHOOL DISTRICT**  
**Department of Facilities Planning and Management**  
**AGREEMENT REQUEST FORM**



**Requested By:** Amy Haedt  
**Date Requested:** 03/22/18


**FUNDING SOURCE(s)**  
 Fund 21, Measure J  
**RESOURCE** 9450

**BUDGET NUMBER**  
 3029905812 - 6215

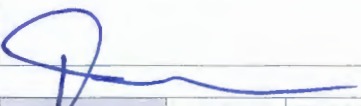
**Project Name** Fremont New Construction

**VENDOR NUMBER**  
 V060869

**Project Number:** 13158

**APPROVED:**  
 Roland Broach, Interim Deputy Chief of Facilities  
  
 Date: 4-28-18

**Vendor (Name, Address, Phone, Email):**  
 Syska Hennessy  
 425 California Street, Suite 700  
 San Francisco, CA 94104  
 (415) 288-9061  
 Edwin Essary *eessary@syska.com*

Cesar Monterrosa, Facilities Director  
  
 Date: 4/17/18

Local Business Participation	LOCAL	SMALL	RESIDENT	TOTAL
	0.00%	0.00%	0.00%	0.00%

TYPE OF SERVICE / FORM OF CONTRACT	
1 Architectural / Engineering / Design <i>Greater than \$90,200</i>	<input type="checkbox"/>
2 Independent Consultant <i>Greater than \$90,200</i>	<input type="checkbox"/>
3 Equipment, Materials, Supplies <i>Greater than \$50,000</i>	<input type="checkbox"/>
4 Award of Bid (Construction)	<input type="checkbox"/>
5 Construction Work - CUPCCAA (\$45,000 to \$175,000)	<input type="checkbox"/>
6 Preliminary Services Lease Leaseback, JV's (from legal)	<input type="checkbox"/>
7 Site and Facilities Leases Lease Leaseback, JV's (from legal)	<input type="checkbox"/>

8 Architectural / Engineering / Design <i>Less than \$90,200</i>	<input checked="" type="checkbox"/>
9 Independent Consultant <i>Less than \$90,200</i>	<input checked="" type="checkbox"/>
10 Purchase Order (P.O.) Equipment, Materials, Supplies up to \$50,000	<input type="checkbox"/>
11 Construction Work - CUPCCAA <i>Less than \$45,000</i>	<input type="checkbox"/>
12 PIGGYBACK Resolution for Equipment, Supplies, Vehicles, and Personal Property (NOT SERVICES)	<input type="checkbox"/>
13 CMAS for Equipment, Materials, Supplies and Services	<input type="checkbox"/>
14 AMENDMENT to existing Contract (Provide details of Amendment on following page)	<input type="checkbox"/>
15 CHANGE ORDER (No.)	<input type="checkbox"/>

**For CONSTRUCTION CONTRACTS -**  
**On following page sheet provide:**

- 1.Date(s) of Bid Advertisement;
- 2.Number of Bids Received, List of Bidders and Bid Amounts;
- 3.Date of Bid Opening;
- 4.Name of Architect;
- 5.Project Duration
- 6.Liquidated Damages \$ per day
- 7.Phasing/Milestones
- 8.DIR Contractor/Subcontractor registration # \_\_\_\_\_

<b>CONTRACT TERM</b>	
<b>Start Date / End Date:</b>	3/26/2018 / 12/20/2020
<b>TOTAL COST:</b>	\$13,250.00

**For Non-Construction AGREEMENTS**  
**Provide:** Greater than or equal \$88,300

- 1.Date(s) of Formal RFQ/RFP Advertisement:  
or
2. Exception to Competitive Bid relied upon:  
(from Contract Justification Form)

**RECEIVED**  
 04.25.18


 RECEIVED APR 19 2018





✓

**Oakland Unified School District  
Department of Facilities Planning & Management**

TO: Karen  
4/25/18  
12:15pm  


**Request for Signature**

**To:** Cesar Monterrosa, Director of Facilities-Planning  
Roland Broach, ~~Interim~~ Deputy Chief of facilities  
Tadashi Nakadegawa, Director

**From:** Amy Haedt, Project Manager 

**Date:** April 9, 2018

**Project Name:** Fremont New Construction

**Project Number:** 13158

**Type of Document:** Agreement Request Form

**Reason for Request:** To create a contract between OUSD and Syska Hennessy.

**Project Manager Recommendation:** Please approve.

**ATTACHMENTS:**

Agreement Request Form..... \$13,250.00



**DATE:** March 19, 2018

**PROJECT LOCATION:** Oakland, CA

**CLIENT:** Oakland Unified School District

**PROJECT DESCRIPTION:** Fremont School

**1. EXTENT OF AGREEMENT:** These Terms and Conditions supplement and govern all aspects of the obligations and liabilities between Syska Hennessy Group ("Syska") and the Client relating to the Project. Unless otherwise expressly defined, the terms used in this document have the same meaning as terms in the Engineering Proposal which this document supplements. In the event of any inconsistencies between these Terms and Conditions and the Engineering Proposal or any other agreement ("collectively referred to as "Other Agreements") executed previously or simultaneously to this document, the provisions of these Terms and Conditions shall control and supersede all prior or simultaneous negotiations, representations and agreements, either written or oral. The Other Agreements and these Terms and Conditions are referred to herein collectively as the "Agreement." The Client acknowledges and agrees that it has reviewed these Terms and Conditions and that neither it nor Syska shall be deemed to be the scrivener of this document for the purpose of drawing an inference to construe an ambiguity herein. In the event that these Terms and Conditions are not fully executed, they shall nonetheless be effective and controlling to the parties so long as Syska has provided same to the Client and has begun work and not received written objections or modifications. Services provided by Syska herein are solely for the benefit of the Client and nothing contained in these Terms and Conditions shall create a contractual relationship with or a cause of action in favor of a third party.

**2. DEFINITIONS:**

**2.1.** The term "Instruments of Service" means all of the information produced in furtherance of this project, including, without limitation, the plans and specifications prepared by or for Syska, in any medium, including graphic and pictorial representations, indicating the related engineering designs for the Project and shall include plans, sections, details, schedules, diagrams and written descriptions which set forth the design intent of the Project as well as any other drawings, diagrams, calculations, reports, operational and design data.

**2.2.** The term "Work" means the construction and services, supplies, labor, equipment, materials, components, or assemblies related to or required for the construction of the Project by a contractor and other construction specialists. The Work may constitute the whole or a part of the Project, whether completed or partially completed.

**2.3.** The term "Construction Documents" shall mean the drawings and specifications from which the Work is actually constructed.

**2.4.** The term "Record Documents" means a revised set of Construction documents based upon the As Builts prepared by Contractor, reflecting all major deviations made during the construction process.

**2.5.** The term "Project" shall refer to the description, location and identity of the project in the header of this Agreement and as more fully described in the scope of service which is part of this Agreement, of which the services performed under this Agreement may be the whole or part.

**3. STANDARD OF CARE:** Syska's services shall be performed in a manner consistent with that degree of skill and care ordinarily exercised by practicing professionals performing similar services in the same locality, at the same site and under the same or similar circumstances and conditions (the "Standard of Care"). Syska makes no other representations or warranties, express or implied, with respect to the services rendered hereunder.

**4. ADDITIONAL SERVICES:** The services described in this Paragraph are not included in Basic Services to be provided by Syska. If the Client requests that Syska perform any of the following services (the "Additional Services"), the Client shall provide Syska with additional compensation equal to Syska's hours expended at Syska's standard hourly rates. Syska's hourly rates may be adjusted annually in accordance with Syska's standard practice. In the alternative, the Client and Syska may agree on stipulated sum fees for specific Additional Services. However, in no event shall Syska be compelled or required to perform what it deems to be an Additional Service unless the Client provides the appropriate written change order.

**4.1. PRIOR TO ISSUANCE OF CONSTRUCTION DOCUMENTS:** It shall be an Additional Service if Syska is requested to make any revisions in the Instruments of Service when such revisions are:

**4.1.1.** inconsistent with approvals or instructions previously given by the Client;

**4.1.2.** required because of changes in the Project including, size, quality, complexity, the Client's schedule, the Client's budget, or the method of bidding or negotiating and contracting for construction;

**4.1.3.** required due to errors or omissions in the services of any Client's consultant or anyone performing work;

**4.1.4.** required by the enactment or revisions to codes, laws or regulations subsequent to the preparation of such documents;

**4.1.5.** due to changes required as a result of the Client's failure to render decisions in a timely manner; or

**4.1.6.** required to reduce the cost of the Project to comply with previous cost estimates or Project budgets, including value engineering.

**4.2. AFTER THE ISSUANCE OF CONSTRUCTION DOCUMENTS:** It shall be an Additional Service if Syska is requested to make any revisions to the Instruments of Service that are not the result of Syska's failure to comply with the Standard of Care and all of the following activities after the issuance of Construction Documents shall be considered Additional Services:

**4.2.1.** preparing any changes to the Instruments of Service or preparing other documentation, analysis and supporting data, evaluating contractors' proposals, and providing other services in connection with change orders and Construction Change or Extra Work Directives.

**4.2.2.** providing services in connection with evaluating substitutions or alternates proposed by a contractor, the Client or others.

**4.2.3.** providing services made necessary by the default or termination of a contractor, by defects or deficiencies in the construction of the Project or by the failure of performance on the part of the Client, any contractor or others performing services or Work in connection with the Project.

**4.2.4.** providing services in connection with claims submitted by any contractor or others performing services or providing Work on the Project.

**4.2.5.** providing services in connection with the preparation for legal proceedings or attendance at public hearings or other meetings.

**4.2.6.** providing services when submittals are reviewed prior to receiving a submittal schedule, reviewing submittals out of sequence, or if more than two reviews are required of any submittal.

**4.2.7.** providing services in responding to unnecessary, excessive or unreasonable requests for information submitted by the Client, any contractor or others who are performing Work or supplying materials in connection with the Project.

**4.2.8.** providing services in excess of one punch list compilation for each area or component of the Project and one review of the punch list items for completion.

**4.2.9.** providing any services requested by the Client after the earlier of the issuance of the final Certificate for Payment or sixty (60) days after Substantial Completion was originally scheduled.

**4.2.10.** providing services that are not customarily provided by an engineer as basic services on projects of similar size, complexity and scope as the Project and which have not been set forth as Basic or Additional Services in this Agreement.

**4.2.11.** providing "fast track" services.

**4.2.12.** segregating bidding packages for pricing and award of contracts for the construction of the Project.

**4.2.13.** In the event that the Client seeks the assistance of Syska in the prosecution of any claim against another Project participant, or the defense of any claim asserted against the Client, then Syska shall be fully reimbursed for all costs incurred at the respective hourly rates identified for Additional Services together with any expenses associated therewith.

**5. LIMITATIONS OF LIABILITY:**



**5.1. AGGREGATE LIMITS:** To the fullest extent permitted by law, Client and Syska each waive any right to consequential, liquidated or incidental damages and agree that the total liability, in the aggregate, of Syska and Syska's officers, directors, employees, agents, and independent professional associates, and any of them, to the Client and any one claiming by, through or under the Client, for any and all injuries, claims losses, expenses, or damages whatsoever arising out of or in any way related to Syska's services, the Project or this Agreement, from any cause or causes whatsoever, including but not limited to, the negligence, errors, omissions, strict liability, breach of contract, misrepresentation, or breach of warranty of Syska or Syska's officers, directors, employees, agents or independent professional associates, or any of them, shall not exceed the lesser of the total compensation received by Syska for the specific work performed resulting in Client's damages or the limits of the available insurance coverage specifically identified and required by the Client for this Project at the time when the claim is resolved.

**5.2. COST INCREASES:** Syska is not responsible for cost increases to the Project as a result of requests made by the Client after Construction Documents are issued for permit, changes in governmental agency requirements after previous approval, unforeseen conditions or causes beyond the reasonable control of Syska. For Work that has been omitted from the drawings and specifications beyond the Standard of Care, but is necessary for the proper completion of the Project and would have been added to the original bid if shown on the drawings and specifications, if discovered at a time when the Work is more expensive to install than it would have been if originally shown on the drawings and specifications, Syska's error is measured as the portion of the costs and fees that would have been avoided in the original bid had the Work been shown. In the event of a disagreement regarding Syska's error, the dispute resolution procedures in this Agreement shall apply.

**5.3. THIRD-PARTY DEFICIENCIES:** Syska is not responsible to the Client or any third parties for errors, omissions or other deficiencies in the services of any other design professional or design-build contractor rendering design, engineering or related services for the Client not employed by Syska. Syska's sole liability in connection with the services of the Client's consultants or design-build contractors shall be to the extent expressly identified in the scope of services. The Client shall require consultants or design-build contractors retained by the Client to coordinate their services and documents with those of Syska and Syska's consultants.

**5.4. RESPONSIBILITY FOR CONSTRUCTION OF PROJECT:** Syska is not responsible for the actual construction of the Project and shall not be deemed to have a duty of means and methods.

**5.5. CERTIFICATION.** Syska is under no duty to execute certifications unless the language and the scope of the certification is provided to Syska prior to performing work and Syska, in its professional opinion, believes that its scope provides a sufficient basis for executing the certification.

**5.6. INSTRUMENTS OF SERVICE:** The Instruments of Service are not a substitute for the shop drawings and other submittals which will be used to actually construct the Project. Nothing in the Agreement shall create or be deemed to create any duty upon Syska to supervise the construction means and methods and/or safety procedures of any contractor, subcontractor, or their employees or agents, or any other person or party. Syska shall not incur any liability as a result of the acts, omissions, or failure to properly perform of any contractor, subcontractor, or their employees or agents, or any other person or party.

**5.6.1. REVIEW SERVICES:** If included as part of the scope of work, observation or review services performed by Syska pursuant to the Agreement, whether of material or work and whether performed prior to, during or after completion of construction, are performed solely for the purpose of attempting to determine general conformity of the work performed by others with the contract plans and specifications. Syska shall not be responsible to make exhaustive or continuous reviews to check the quality or quantity of the Work.

**5.6.2. RESPONSIBILITY FOR CONSTRUCTION COSTS:** Upon the request of the Client, Syska shall review and comment on any proposed Project construction budget or estimates of construction costs prepared by or for the Client. The Client acknowledges that any comments represent Syska's judgment as a professional familiar with the construction industry, and it is not responsible for (i) cost increases due to the timing of a contractors' buy-outs for the Project; (ii) the cost of labor, materials or equipment; (iii) Contractors' methods of determining bid prices; (iv) competitive bidding, market or negotiating conditions; (v) contractors', fabricators' or suppliers' failure to meet Project schedules; or (vi) the quality of construction work or the materials supplied for the Project. Accordingly, Syska does not represent that bids or negotiated prices will not vary from the Client's Project construction budget or from any estimate of construction costs reviewed by Syska. The Client further agrees that Syska shall have no liability for actual construction costs exceeding the Project construction budget or prior cost estimates. If the Client requests that Syska provide redesign services to reduce construction costs, Syska shall be compensated for such redesign efforts as Additional Services, provided that such redesign efforts were not required due to an error, inconsistency or omission in the Instruments of Service beyond the Standard of Care.

**5.6.3. RESPONSIBILITY FOR PROJECT SCHEDULE:** Syska is responsible for meeting the milestone dates set forth in a schedule of design

deliverables that it agrees to and are incorporated in to the Client's Project Schedule. However, if Syska's ability to meet any of its specific milestone dates is adversely affected by the actions of the Client, construction manager, any contractor or others, then Syska's liability for missing any milestone dates shall be reduced to the extent the delay is caused by the actions or failure to act of others.

**5.7. RECORD DOCUMENTS:** The Client acknowledges that Syska is generally not responsible for the production or modification of Record Documents as it is a contractor's sole responsibility, who through his superintendent, is constantly present at the site, in control of operations, and involved in all details of construction. Should Syska be requested to prepare or modify Record Documents, the Client understands the limitations of the Record Documents and acknowledges and agrees that Syska has not verified the accuracy or completeness of the information on which the Record Documents are based and agrees to indemnify and release Syska for any liability for any errors or omissions that may be incorporated therein.

**5.8. ACCELERATED PROJECT DELIVERY OR FAST TRACK:** In the event the Client chooses to take advantage of the potential time and cost savings benefits of an accelerated project delivery or fast-track process, the Client acknowledges that it has been advised that the Project will be affected. Some of the effects of either process include the necessity of making early or premature commitments to design decisions and the issuance of incomplete and uncoordinated Construction Documents for permitting, bidding, and construction purposes. The Client acknowledges that the Project, if developed on either basis, will likely require associated coordination, design, and redesign of parts of the Project after Construction Documents are issued and the construction contract is executed, and may require removal of work-in-place, all of which events may cause an increase in the Cost of the Work and/or an extension of the Project construction schedule. Therefore, the Client acknowledges the necessity of including sufficient contingencies in the budget for the Cost of the Work to account for additional costs and construction schedule extensions arising from either process.

**5.9. MEDIA AND WEBSITE LIABILITY:** The Client recognizes that the Instruments of Service may be generated, stored, transmitted, or published in various media, including, but not limited to traditional hard copy (i.e., blueprints), CADD formats, via Internet or Extranet websites and the Instruments of Service may be subject to tampering, modifications by parties over whom Syska has no control. The Instruments of Service are also subject to discrepancies as a result of numerous factors, including, transmission and translation errors resulting from differences in computer software, hardware and equipment-related problems, disc malfunctions and user error. If requested, Syska shall provide the Client with the Instruments of Service in electronic form. The Client releases Syska from any claims as a result of differences between Syska's filed hard copy and the electronic form of the Instruments of Service. For each recipient to whom the Client provides the Instruments of Service in electronic form or to whom Syska provides the Instruments of Service in electronic form at the Client's request or under this Agreement, the Client agrees to defend, indemnify and hold harmless Syska, its consultants, and their respective officers, directors and employees from all claims, liability, loss, damages, judgments and costs, including reasonable attorney's fees and expenses, arising from any differences between the filed hard copy and the electronic form of the Instruments of Service. The Client acknowledges and agrees that it is responsible for the initiation and maintenance of any Project Internet or Extranet site and any related computer software and hardware (collectively, the "Site") and for all costs associated therewith, including without limitation, any monthly fees for users of the Site charged by the service provider which shall be retained by the Owner. Syska shall have no responsibility for the initiation or maintenance of the Site or for any costs associated with the Site. Syska shall also have no responsibility or liability for any delays or damages caused by the failure of the Site to function properly and shall not be liable to the Client or to any contractor, consultant or any third party for any delays, errors or omissions in Syska's services caused by the failure of the Site to function properly. The Client agrees that all Project-related contracts shall provide that each user of the Site is granted a limited license to utilize the content of the Site in connection with the Project only, with no right to sublicense or resell, consistent with and subject to the terms and conditions of this Agreement. The Client shall also obtain a release from each user of the Site naming Syska as a releasee from all claims, liability, loss and damages, arising from or related to the publication of the Instruments of Service or other materials on the Site.

**5.10. HAZARDOUS MATERIALS:** Syska's services do not include services related to detection, reporting, permitting, analysis, or abatement of asbestos, hazardous or toxic materials including molds and fungus (collectively "hazardous materials") at the Project site. In the event Syska or any other party encounters hazardous materials at the jobsite, or should it become known in any way that hazardous materials may be present at the jobsite or any adjacent areas that may affect the performance of Syska's services, Syska may, without liability for consequential or any other damages, suspend performance of services on the Project until the Client retains appropriate specialist consultants or contractors to identify, abate and/or remove the hazardous materials and warrant that the jobsite complies with applicable laws and regulations. To the fullest extent permitted by law, the Client shall defend, indemnify and hold harmless Syska, its consultants, and their respective officers, directors and employees from and against all claims, liability, loss, damages, judgments, costs, and expenses, including reasonable attorneys' fees and expenses, which any of them may at any time sustain or incur by reason of any demands, claims, causes of action or

legal proceedings arising out of or in connection with asbestos, hazardous or toxic materials on the Project site.

**5.11. INDEMNIFICATION:**

**5.11.1. SYSKA INDEMNIFICATION OF CLIENT:** Syska shall indemnify, but not defend, the Client and its officers, directors and employees from and against all, liability, loss, damages, judgments, costs, and expenses, including reasonable attorney's fees and expenses to the extent caused by Syska's negligent acts or negligent omissions in the preparation of the Instruments of Service and for patent, copyright or trademark infringement attributable to Syska's services. The Client further agrees that, to the fullest extent permitted by law, no shareholder, officer, director, partner, principal, or employee of Syska shall have personal liability under this Indemnification provision, under any provision of the Agreement or for any matter in connection with the professional services provided in connection with the Project. In no event shall the duty to indemnify be deemed a duty to defend.

**5.11.2. CLIENT INDEMNIFICATION OF SYSKA:** The Client assumes liability for and agrees to indemnify and hold harmless Syska, its consultants, and their respective officers, directors, and employees, from and against all liability, loss, damages, judgments and costs, including reasonable attorney's fees and expenses, to the extent they are caused by an act or omission of the Client, its agents, employees, consultants or contractors. This indemnity applies to any deviations from the Instruments of Service not approved by Syska in writing. The Client shall provide written notice of any known inconsistencies in Syska's services expeditiously after discovery. The provisions of this section shall extend for all time notwithstanding the termination or expiration of the Agreement.

**6. CLIENT'S RESPONSIBILITY:** The Client shall provide the following:

**6.1.** Full information identifying its requirements for and limitations on the Project. Syska is entitled to rely upon the accuracy and completeness of the information provided by the Client.

**6.2.** A representative authorized to act on the Client's behalf with respect to the Project who shall render decisions in a timely manner pertaining to all requests and/or documents submitted by Syska.

**6.3.** Periodically update the budget for the Project and shall not significantly increase or decrease the overall budget, the portion of the budget allocated for the services performed herein, or any contingencies in the budget without the agreement of Syska as to whether the change will require a corresponding change in the Project scope and quality.

**6.4.** Tests, inspections and reports required by law or the Agreement, including, but not limited to, chemical tests and tests for hazardous materials.

**6.5.** All legal, insurance and accounting services, including auditing services, that it determines shall be necessary to address the Client's needs and interests relating to the Project.

**6.6.** All fees necessary for securing the approval of authorities having jurisdiction over the Project.

**6.7.** Prompt written notice to Syska if the Client becomes aware of any fault or defect on the Project.

**6.8.** The Client recognizing that there will be changes and additions to engineering drawings during construction as a result of field conditions, changes in code or other unforeseeable changes that impact the current design, shall establish design and construction contingency funds after discussion with Syska to cover additional costs which may result from such changes and additions. The project budget shall include a minimum contingency of 5% of total construction cost each for such design and construction contingency fund.

**6.9.** The Client shall inform Syska of all contractor change order requests for work designed by Syska and shall obtain Syska's written opinion as to the change request prior to execution of the change order.

**6.10.** The Client shall review and approve submissions for each phase of the work in a timely manner and shall authorize Syska in writing to proceed with each succeeding phase.

**7. INSURANCE COVERAGES:**

**7.1. MINIMUM AMOUNT OF COVERAGE:** Syska shall maintain the following minimum amounts of insurance during the term of this Agreement.

Type	Coverage
Workers' Compensation	Statutory
Employer's Liability	\$ 1,000,000
General Liability (each occurrence)	\$ 1,000,000
Automobile Liability (combined single limit)	\$ 1,000,000
Professional Liability	\$ 1,000,000
	(per claim and in the aggregate)
Umbrella Liability	\$ 1,000,000

**7.2. PROJECT POLICIES:** If the Client chooses to acquire a policy of

professional liability insurance for the Project, then the Client agrees that it will pay the cost of the project policy and that Syska must agree on the limits of coverage, parties covered, deductible required and length of the policy period after substantial completion of the services.

**7.3. CERTIFICATES OF INSURANCE:** Syska shall upon request provide to the Client certificates of insurance evidencing compliance with the insurance requirements.

**8. OWNERSHIP AND USE OF INSTRUMENTS OF SERVICE:** Syska is the author and owner of the Instruments of Service and shall retain all common law, statutory and other rights, including copyrights, whether the project for which they are made is executed or not. Provided Syska is fully compensated for its services and expenses on the Project, the Instruments of Service shall be made available to be used for construction of the Project and for operation, modification and maintenance of the Project following its completion. The Instruments of Service shall not be used or reused by Client on other projects, for additions to this Project, for completion of this project by others, or for any other purposes for which they were not specifically prepared, except with the express written consent of Syska and with appropriate compensation to Syska. The Client agrees that Syska, its consultants, and their respective officers, directors or employees shall have no liability to the Client and Client shall indemnify, defend and hold them harmless from and against all claims, liability, loss, damages, judgments and costs including reasonable attorneys' fees and expenses, which any of them may at any time sustain or incur arising out of or resulting from the unauthorized use of the Instruments of Service..

**8.1.** Submission or distribution for governmental approvals or for other proper purposes in connection with the Project is not to be construed as publication in derogation of Syska's rights under copyright law.

**8.2.** The Client warrants that it has a license to use and/or copy any documents it supplies to Syska for re-use on this Project that were prepared by others. To the fullest extent permitted by law, the Client shall defend, indemnify and hold harmless Syska, its consultants, and their respective officers, directors and employees from and against all claims, liability, loss, damages, judgments and costs including reasonable attorneys' fees and expenses, which any of them may at any time sustain or incur by reason of breach of the Client's warranty.

**9. TERMINATION AND SUSPENSION:** Except as otherwise provided in this section, this Agreement may be terminated by either party upon not less than thirty (30) calendar days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. If the defaulting party fails to cure its default within the thirty (30) calendar day notice period or fails to commence action to cure its default when the cure cannot reasonably be completed within thirty (30) days, the termination shall take effect without further notice.

**9.1.** Failure of the Client to make payments to Syska in accordance with this Agreement shall be considered substantial non-performance and grounds for termination. At the option of Syska, if the Client fails to make payment when due Syska for services or expenses or fails to comply with any other material obligation under this Agreement, Syska may, upon seven (7) calendar days' written notice to the Client, suspend the performance of its services under this Agreement. Unless payment in full is received by Syska or the Client's other breach hereunder is cured within the seven (7) calendar day notice period, the suspension shall take effect without further notice. In the event of a suspension of services, Syska shall have no liability for any delay or damage caused because of such suspension of services.

**9.2.** Upon a suspension of services by the Client, Syska shall be paid for all fees and expenses for services performed through the date of the suspension plus demobilization expenses. Upon the resumption of Syska's services, Syska's fee shall be equitably adjusted and Syska shall be reimbursed for all expenses incurred as a result of the suspension. If the Client's suspension of Syska's services continues for more than ninety (90) calendar days, Syska may terminate this Agreement upon seven (7) calendar days' written notice to the Client.

**10. FEE PROVISION:** Promptly upon receipt, the Client shall review Syska's invoice requesting payment for services and reimbursable expenses. Invoices shall be submitted monthly. Reimbursable expenses include the actual expenses incurred in connection with the Project. Backup documentation for these expenses can be provided upon request for a ten percent (10%) administrative fee. If the Client disputes in good faith any portion of the invoice, the Client shall notify Syska in writing within five (5) days of receipt of the disputed invoice. The Client shall indicate that portion of the invoice that it disputes and provide a statement as to the reasons for disputing such portion. Any statement or portion of statement not disputed by the Client within the time period set forth herein, shall be paid by the Client within fifteen (15) days of receipt of the invoice. All monies secured by the Client to pay for the Services identified herein shall be deemed to be held in trust for Syska and Syska shall have the right to require the Client, upon request, to furnish evidence of the Client's ability to remit payment for all services. Syska's fees do not include any taxes that may be imposed on them. Taxes, if applicable to our fees for services, are above our fees quoted and the Client agrees to be responsible for any liability and payment of them.

**10.1.** Payments due Syska and which remain unpaid shall bear interest 30 days from the date of the invoice at the rate of eighteen percent (18%) per



annum. Syska is entitled to recover any and all legal fees and any other costs expended if it becomes necessary to pursue legal actions to collect fees due hereunder. Client expressly acknowledges that Syska shall be entitled to a judgment for its attorney fees and court costs attributable to the collection of its fees which are ultimately adjudicated/arbitrated to be rightfully due and owing.

Client: Oakland Unified School District  
955 High street  
Oakland, CA 94601  
Attention: Amy Haedt

10.2. In the event of a dispute pursuant to the services rendered hereunder, the Client shall not have the right to set off any payments due or owing to Syska and shall be obligated to remit all payments due and owing for completed service. Syska's full payment pursuant to this section shall be a condition precedent for its obligation of performance.

10.3. Payments are to be remitted via wire transfer based on the following information:

Beneficiary: Syska Hennessy Group, Inc.  
1515 Broadway  
New York, NY 10036  
  
Bank: TD Bank, N.A.  
475 Park Avenue South  
New York, New York 10016  
Account No.: 7915510643  
Routing No.: 026013673

11. **ANTI-BRIBERY AND ANTI-CORRUPTION COMMITMENT:** The parties agree that no payments or transfers of value by Client in connection with the Agreement shall be made that have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in, extortion, kickbacks, or other unlawful or improper means of obtaining business. Client hereby represents, warrants, and covenants that Client and its subsidiaries, owners, partners, officers, directors, employees, agents, representatives, and subcontractors are fully aware of the provisions of the United States Foreign Corrupt Practices Act ("FCPA"), 15 U.S.C. §78dd-1, et seq., as amended regarding, among other things, payments to government officials. No Client or Syska employee may receive or accept anything of value, or that may be perceived as valuable, from any other individual for the purpose of influencing any act, securing an improper advantage, or obtaining/retaining business. Either party may terminate this Agreement at any time during the Project, if it has a good faith basis to believe that the other party failed to comply with the provisions of this Section 11, including any non-compliance prior to the effective date of this Agreement.

12. **NO SOLICITATION OF EMPLOYEES:** The Client agrees and acknowledges that it will not, directly or indirectly, solicit or hire any employee of Syska or induce any Syska employee to terminate his or her employment with Syska without the express written consent of Syska. Recognizing that Syska has expended a substantial investment in recruitment, advertisement, testing, and training of their personnel, the Client agrees that if it violates the previous clause and hires a Syska employee within one year of the completion of the Project, it shall pay Syska for each employee thus hired, the amount of one year's salary, at the last level of annual remuneration that employee received from Syska.

13. **DISPUTE RESOLUTION:**

13.1. **MEDIATION:** In recognition of the negative consequences associated with disputes both in terms of lost time and expense to all parties, the Client and Syska agree to settle their disputes by good-faith mediation as a condition precedent to the institution of legal proceedings by either party. If mediation would jeopardize the substantive rights of either party due to the application of any applicable statute of limitations, then mediation will be required during the dispute resolution process to the extent it may be used without jeopardizing the substantive rights of either party. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon.

13.2. **LITIGATION:** In the event that the matter cannot be resolved through (or is not appropriate for) negotiation or mediation, the dispute shall be submitted for determination in the applicable courts of the state where the Project is located and this Agreement shall be subject to and construed in accordance with the laws of that state. The Client shall not assert any claim against Syska more than three (3) years after the date of the substantial completion of the Project. **(YOU NEED TO CONSIDER IF THE WORK IS INTERNATIONAL)**

14. **NOTICES:** Any and all notices or other communications required by this Agreement or by law to be served on, given to, or delivered to either party, shall be in writing and shall be deemed received when personally delivered to the party to whom it is addressed, project manager, or in lieu of such personal service, upon receipt of telegraphic or facsimile notice or three (3) days after deposit in the United States mail, first-class, postage prepaid, at the respective addresses set forth below:

Syska: Syska Hennessy Group, Inc.  
425 California Street, Suite 700  
San Francisco, CA 94104  
Attention: Edwin Essary

15. **FORCE MAJEURE:** Neither the Client nor Syska shall be held accountable or penalized under the terms of this Agreement for the failure to perform which is occasioned by war, strike, Act of God, natural disaster, or other casualty beyond the reasonable control of the Client or Syska.

16. **ENTIRE AGREEMENT/MODIFICATION/ASSIGNMENT:** This Agreement contains the entire agreement between parties with respect to the matters covered herein and supersedes any previous agreements (oral or written) or understandings between the parties. The Agreement may be amended only by written modification executed by both parties and may not be assigned without the written permission of the non-assigning party. Notwithstanding the foregoing Syska may assign this Agreement to an affiliated or related entity of Syska in order to comply with professional registration requirements for engineering and architecture companies within the jurisdiction in which the Project is located.

17. **PUBLICITY:** Syska shall have the right to include photographic or artistic representations of the design of the Project among its promotional and professional materials. Syska shall be given reasonable access to the completed Project to make such representations. However, Syska's materials shall not include the Client's confidential or proprietary information if the Client has previously advised Syska in writing of the specific information considered by the Client to be confidential or proprietary. The Client shall provide professional credit for Syska in the Client's promotional materials for the Project.

18. **SUCCESSORS/ASSIGNS:** This Agreement shall be binding upon the parties' successors and permitted assignees. Syska may assign this Agreement to an affiliated or related entity of Syska in order to comply with professional registration requirements for engineering and architecture companies within the jurisdiction in which the Project is located.

19. **SEVERABILITY:** The partial or complete invalidity of any one of more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

Agreed and Accepted by:

\_\_\_\_\_  
(Client)

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print or type)

Title: \_\_\_\_\_  
(Print or type)

Agreed and Accepted by Syska Hennessy Group, Inc.

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print or type)

Title: \_\_\_\_\_  
(Print or type)



## DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

### Project Information

<b>Project Name</b>	Fremont New Construction Project	<b>Site</b>	302
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### Basic Directions

**Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.**

<b>Attachment Checklist</b>	<input type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider
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### Contractor Information

<b>Contractor Name</b>	Syska Hennessy	<b>Agency's Contact</b>	Edwin Essary				
<b>OUSD Vendor ID #</b>	V060869	<b>Title</b>	Project Manager				
<b>Street Address</b>	425 California Street, Suite 700	<b>City</b>	San Francisco	<b>State</b>	CA	<b>Zip</b>	94104
<b>Telephone</b>	415-288-9061	<b>Policy Expires</b>					
<b>Contractor History</b>	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
<b>OUSD Project #</b>	13158						

### Term

<b>Date Work Will Begin</b>	6-14-2018	<b>Date Work Will End By</b> <small>(not more than 5 years from start date)</small>	12/20/2020
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### Compensation

<b>Total Contract Amount</b>	\$	<b>Total Contract Not To Exceed</b>	\$
<b>Pay Rate Per Hour (if Hourly)</b>	\$	<b>If Amendment, Changed Amount</b>	\$
<b>Other Expenses</b>		<b>Requisition Number</b>	

### Budget Information

*If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.*

Resource #	Funding Source	Org Key	Object Code	Amount
9450	Fund 21, Measure J	3029905812	6215	\$13,250.00

### Approval and Routing (in order of approval steps)

Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.

	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b>	510-535-7082
1.	<b>Director, Facilities Planning and Management</b>				
	Signature	Date Approved	3/29/18		
2.	<b>General Counsel, Department of Facilities Planning and Management</b>				
	Signature	Date Approved	4/8/18		
3.	<b>Deputy Chief, Facilities Planning and Management</b>				
	Signature	Date Approved			
4.	<b>Senior Business Officer, Board of Education</b>				
	Signature	Date Approved			
5.	<b>President, Board of Education</b>				
	Signature	Date Approved			