

Board Office Use: Legislative File Info.

File ID Number	18-1738
Introduction Date	8-22-2018
Enactment Number	18-1406
Enactment Date	8/22/18 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 August 22, 2018

Subject Independent Consultant Agreement greater than \$90,200 - Cumming Construction Management Incorporated - Facilities Planning & Management Project

Action Requested Approval by the Board of Education of an Independent Consultant Agreement greater than \$90,200 between the District and Cumming Construction Management Incorporated, Sunnyvale, CA, for the latter to provide the District with Construction Management services for Measure J Bond Program, agreement provides for service from July 2018 to June 2020 for professional services to assist the District staff with the management construction projects, in conjunction with the Facilities Planning and Management Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing August 23, 2018 and concluding no later than June 30, 2020, in an amount not-to-exceed \$2,024,705.00.

Discussion Services allow Construction Manager to continue providing professional services to assist the District staff with Construction projects.

LBP (Local Business Participation Percentage) 50.00%

Recommendation Approval by the Board of Education of an Independent Consultant Agreement greater than \$90,200 between the District and Cumming Construction Management Incorporated, Sunnyvale, CA, for the latter to provide the District with Construction Management services for Measure J Bond Program, agreement provides for service from July 2018 to June 2020 for professional services to assist the District staff with the management construction projects, in conjunction with the Facilities Planning and Management Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing August 23, 2018 and concluding no later than June 30, 2020, in an amount not-to-exceed \$2,024,705.00.

Fiscal Impact Fund 21, Measure J

Attachments

- Independent Consultant Agreement including scope of work
- Certificate of Insurance
- Payment and Performance Bonds



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

Legislative File ID No. _____

Department: Facilities Planning and Management

Vendor Name: Cummings Construction Mangement Incorp

Project Name: Facilities Planning and Management Project No.: 00918

Contract Term: Intended Start: 8/23/2018 Intended End: 6/30/2020

Annual (if annual contract) or Total (if multi-year agreement) Cost: \$2,024,705.00

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?

RFP selection process

Summarize the services this Vendor will be providing.

Construction management services for Measure J Bond Program. Agreement provides for services from July 2018-June 2020 for not-to-exceed fee of \$2,024,705.00 Amendment: (1) increases not-to-exceed fee from initial term by \$258,685 to \$1,158,685; (2) extends term another year, from 12/1/2017 - 11/30/2018, for a not-to-exceed fee of \$2,708,605.

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

If No, please answer the following:

1) How did you determine the price is competitive?

negotiated

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
FOR PROFESSIONAL SERVICES
Greater Than \$90,200**

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the **30th day of July 2018**, by and between the **Oakland Unified School District** ("District") and **Cumming Construction Management Incorporated** ("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 the District with Construction Management services for Measure J Bond Program. Agreement provides for service from July 2018-June 2020 for professional services to assist District staff in the management construction projects.

2. **Term.** Consultant shall commence providing Services under this Agreement on **August 23, 2018**, and will diligently perform as required and complete performance by **June 30, 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:

<u> X </u> Signed Agreement	<u> X </u> W-9 Form
<u> X </u> Insurance Certificates & Endorsements	<u> X </u> Workers' Compensation Certificate ✓
<u> X </u> Debarment Certification ✓	Other: _____
<u> X </u> Fingerprinting/Criminal Background Investigation Certification ✓	

4. **Compensation.** District agrees to pay Consultant for Services satisfactorily rendered pursuant to this Agreement, a fixed fee of **TWO MILLION, TWENTY-FOUR THOUSAND, SEVEN HUNDRED FIVE NO/100 DOLLARS (\$2,024,705.00)**, 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

Contract #11: Independent Consultant Greater than \$90,200 - Cumming Construction Management Incorporated - Facilities Planning and Management Project - \$2,024,705.00

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, 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
Commercial General Liability Insurance, including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
Professional Liability	\$ 1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 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
Facilities Planning and Management
955 High Street
Oakland, CA 94601
Tel: 510-535-7038; Fax: 510-535-7082
ATTN: Tadashi Nakadegawa

Cumming Construction Management
Incorporated
530 Lakeside Drive, Suite 140
Sunnyvale, CA 94085
Tel: 408-769-6942
ATTN: John Olsson

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 authorized 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.sem.gov/portal/public/SAM>



Tadahsi 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 8/23/18
 Aimee Eng, President, Board of Education Date
Kyla Johnson-Trammell 8/23/18
 Kyla Johnson-Trammell, Superintendent & Secretary, Board of Education Date
Timothy White _____
 Timothy White, Deputy Chief, Facilities Planning and Management Date

APPROVED AS TO FORM:

[Signature] 8/13/18
 OUSD Facilities Legal Counsel Date

CONSULTANT

[Signature] JOHN OLSSON DIRECTOR 7/31/2018
 Date

Information regarding Consultant:

Consultant: CUMMING CM, INC.
 License No.: 20-8782096
 Address: 530 LAKESIDE DRIVE #140
SUNNYVALE, CA 94085
 Telephone: (408) 540-4708
 Facsimile: _____
 E-Mail: JOHNSON@CCORPUSA.COM

 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.

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

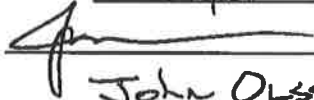
WORKERS' COMPENSATION CERTIFICATION

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: July 31, 2018
Proper Name of Consultant: CUMMING Construction Management, Inc.
Signature: 
Print Name: John Olsson
Title: SENIOR PROJECT DIRECTOR

(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 **Cumming Construction Management Incorporated** ("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 21st day of July 2018 for the purposes of submission of this Agreement.

By:



Signature
JOHN OLSSON

Typed or Printed Name
SENIOR DIRECTOR

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: July 31, 2018

Name of Consultant: CUMMING CM, INC.

Signature: 

Print Name and Title: John Olsson - Senior Director

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

Cumming Construction Management Incorporated will provide the District with Construction Management and professional services with construction projects under the Measure J Bond Program.



PLANNED PROJECT MANAGEMENT EFFORT

Project #: **Proposal**
 Project Name: **Oakland USD**

Start: **7/1/2018**
 End: **6/30/2020**

Team Member	Phase >>>														
	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	
TOTAL															

Elena Comrie (\$152,50)	3,680	184	184	184	184	184	184	184	184	184	184	184	184	184	184
John Zilber (\$152,5)	22	22													
Dove Edwards (\$110)	3,792	168	184	168	176	160	160	152	176	168	176	168	168	168	184
April Clement - PE - Hattin (\$110)	3,964	168	184	168	176	160	160	152	176	168	176	168	168	168	184
Name TBD - CM - Hattin (\$145)	3,964	168	184	168	176	160	160	152	176	168	176	168	168	168	184
Total Hours	15,422	710	736	688	712	664	664	640	712	688	712	688	688	688	736

Total Staffing Fee

Elena Comrie (\$152,50)	567,934	28,060	28,060	28,060	28,060	28,060	28,060	28,060	28,060	28,060	28,060	28,060	28,060	28,060	28,902
John Zilber (\$152,5)	3,355	3,355													
Dove Edwards (\$110)	422,954	18,480	20,240	18,480	19,360	17,600	17,600	16,720	19,360	18,480	18,480	18,480	18,480	18,480	20,847
April Clement - PE - Hattin (\$110)	442,442	18,480	20,240	18,480	19,360	17,600	17,600	16,720	19,360	18,480	18,480	18,480	18,480	18,480	20,847
Name TBD - CM - Hattin (\$145)	583,219	24,360	26,680	24,360	25,520	23,200	23,200	22,040	25,520	24,360	24,360	24,360	24,360	25,091	27,480
Discount Line	0.0%														
Total Fee	\$ 2,019,905	\$ 92,735	\$ 95,220	\$ 89,380	\$ 92,300	\$ 86,460	\$ 86,460	\$ 83,540	\$ 92,300	\$ 89,380	\$ 92,300	\$ 89,380	\$ 92,300	\$ 89,380	\$ 92,061

Reimbursable

<<Expenses or Consultants>>															
Reimbursables	4,800	200	200	200	200	200	200	200	200	200	200	200	200	200	200
Total Reimbursable Expenses	\$ 4,800	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200

Total Fee

Total Fee	\$ 2,024,705	\$ 92,935	\$ 95,420	\$ 89,580	\$ 92,500	\$ 86,660	\$ 86,660	\$ 83,740	\$ 92,500	\$ 89,580	\$ 92,500	\$ 89,580	\$ 92,500	\$ 89,580	\$ 92,061
------------------	---------------------	------------------	------------------	------------------	------------------	------------------	------------------	------------------	------------------	------------------	------------------	------------------	------------------	------------------	------------------

CUMMING

PLANNED PROJECT MANAG

Project #: **Proposal**
 Project Name: **Oakland USD**

Team Member	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20
-------------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------

Project Staffing Hours

Elena Comrie (\$152.50)	184	184	184	184	92	92	46	46	46	46
John Zilber (\$152.5)	168	176	160	160	168	152	176	84	88	84
Dovie Edwards (\$110)	168	176	160	160	168	152	176	168	176	84
April Clement - PE - Hattin (\$110)	168	176	160	160	168	152	176	168	176	84
Name TBD - CM - Hattin (\$145)	168	176	160	160	168	152	176	168	176	84
Total Hours	688	712	664	664	596	548	574	466	486	298

Total Staffing Fee

Elena Comrie (\$152.50)	28,902	28,902	28,902	28,902	14,451	14,451	7,225	7,225	7,225	7,225
John Zilber (\$152.5)	19,034	19,941	18,128	18,128	19,034	17,222	19,941	9,517	9,970	9,517
Dovie Edwards (\$110)	19,034	19,941	18,128	18,128	19,034	17,222	19,941	19,034	19,941	9,517
April Clement - PE - Hattin (\$110)	25,091	26,286	23,896	23,896	25,091	22,701	26,286	25,091	26,286	12,545
Name TBD - CM - Hattin (\$145)										
Total Fee	\$ 92,061	\$ 95,069	\$ 89,054	\$ 89,054	\$ 77,611	\$ 71,595	\$ 73,393	\$ 60,868	\$ 63,422	\$ 38,805

Reimbursable

Reimbursables	200	200	200	200	200	200	200	200	200	200
---------------	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----

Total Reimbursable Expenses

Total Fee	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200
-----------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------

OAKLAND UNIFIED SCHOOL DISTRICT
FACILITIES, PLANNING AND MANAGEMENT
955 High Street
Oakland, CA 94601

REQUEST FOR PROPOSALS
CONSTRUCTION MANAGEMENT SERVICES
OAKLAND UNIFIED SCHOOL DISTRICT
MEASURE J BOND PROGRAM
June 27, 2016

The Oakland Unified School District ("District") is requesting qualified persons, firms, partnerships, corporations, associations, or professional organizations to perform the construction management services through the completion of the District's Measure J Bond Program. Services may include any or all of the following: District staff augmentation for construction management services, or related services. Responders are encouraged to submit proposals that address your flexibility in providing one or all of these services, and identify your experience level with each. The District may also consider retaining more than one firm.

Interviews (if deemed necessary at OUSD's sole discretion): the week of September 5, 2016.(at OUSD Department of Facilities Planning and Management, 955 High Street Oakland, CA).

Respondents to this RFP should mail or deliver Five (5) bound copies and One (1) unbound copy of their Proposal, as further described herein, to:

Tadashi Nakadegawa, Facilities Director, 955 High Street, Oakland, CA 92601

All responses are due by 4:00 p.m., on August 26, 2016. FAX OR EMAIL RESPONSES WILL NOT BE ACCEPTED.

The District will conduct an informational meeting regarding this RFP **at 10:00 a.m. on July 19, 2016 - 955 High Street, Oakland.**

All questions regarding this RFP and requests for clarification must also be submitted via email by July 26, 2016 to Tadashi Nakadegawa (tadashi.nakadegawa@ousd.org) with copies to Cesar Monterrosa (cesar.monterrosa@ousd.org), and Maxine Jasper (maxine.jasper@ousd.org).

All proposals must be preceded by an email by the July 26, 2016 deadline to these same addressees notifying the District of your interest in presenting a proposal including the contact name, email, phone, and address of the firm or team contact.

This is neither a formal request for bids, nor an offer by the District to contract with any party responding to this request. The District reserves the right to reject any and all proposals.

A full copy of the invitation must be downloaded from the District's web site at: www.ousd.org, under the Department of Facilities Planning and Management subheading Bid and Requests for Proposals.

The District reserves the right to reject any and all proposals.

OAKLAND UNIFIED SCHOOL DISTRICT
FACILITIES, PLANNING AND MANAGEMENT
955 High Street
Oakland, CA 94601

REQUEST FOR PROPOSALS
CONSTRUCTION MANAGEMENT SERVICES
OAKLAND UNIFIED SCHOOL DISTRICT
MEASURE J BOND PROGRAM

June 27, 2016

Key Dates:

- **Non-mandatory Pre-submittal meeting 10:00 a.m., July 26, 2016 at the Facilities Department, 955 High Street, Oakland, CA 94601.**
- **Final Date for submission of written questions: August 2, 2016**
- **Final Date to register to present a proposal: August 2, 2016**
- **Final Date for District response to written questions: August 9, 2016**
- **Submittals: due by 4:00 p.m., August 18, 2016.**
- **Finalists notified: August 26, 2016 – District provides form of Agreement for review.**
- **Finalists to Submit detailed confidential fee proposal: September 1, 2016.**
- **Interviews: Week of September 5, 2016.**
- **Final determination/recommendation for award: September 16, 2016**
- **Contract approved by OUSD Board of Education: October 26, 2016**

The Oakland Unified School District ("District") is requesting qualified persons, firms, partnerships, corporations, associations, or professional organizations to perform the construction management services through the completion of the District's Measure J Bond Program. Services may include any or all of the following: District staff augmentation for construction management services, or related services. Responders are encouraged to submit proposals that address your flexibility in providing one or all of these services, and identify your experience level with each. The District may also consider retaining more than one firm.

The District educates approximately 37,000 students at eighty-seven (87) school sites located in the City of Oakland; there are 12,000 students in Oakland public charter schools and 18 charter schools are in District owned facilities. Voters within the District have

File No. - OAKLAND USD (CONSTRUCTION MANAGEMENT SERVICES)

OAKLAND UNIFIED SCHOOL DISTRICT

OAKLAND UNIFIED SCHOOL DISTRICT
FACILITIES, PLANNING AND MANAGEMENT
955 High Street, Oakland, CA 94601

REQUEST FOR PROPOSALS
CONSTRUCTION MANAGEMENT SERVICES
OAKLAND UNIFIED SCHOOL DISTRICT
MEASURE J BOND PROGRAM

June 27, 2016

The Oakland Unified School District ("District") is requesting qualified persons, firms, partnerships, corporations, associations, or professional organizations to perform the construction management services through the completion of the District's Measure J Bond Program. Services may include any or all of the following: District staff augmentation for construction management services, or related services. Responders are encouraged to submit proposals that address your flexibility in providing one or all of these services, and identify your experience level with each. The District may also consider retaining more than one firm.

Interviews (if deemed necessary at OUSD's sole discretion): the week of September 5, 2016. (at OUSD Department of Facilities Planning and Management, 955 High Street Oakland, CA).

Respondents to this RFP should mail or deliver Five (5) bound copies and One (1) unbound copy of their Proposal, as further described herein, to:

Tadashi Nakadegawa, Facilities Director, 955 High Street, Oakland, CA 92601

All responses are due by 4:00 p.m., on August 26, 2016. FAX OR EMAIL RESPONSES WILL NOT BE ACCEPTED.

The District will conduct an informational meeting regarding this RFP at 10:00 a.m. on July 19, 2016 - 955 High Street, Oakland.

All questions regarding this RFP and requests for clarification must also be submitted via email by July 26, 2016 to Tadashi Nakadegawa (tadashi.nakadegawa@ousd.org) with copies to Cesar Monterrosa (cesar.monterrosa@ousd.org), and Maxine Jasper (maxine.jasper@ousd.org).

All proposals must be preceded by an email by the July 26, 2016 deadline to these same addressees notifying the District of your interest in presenting a proposal including the contact name, email, phone, and address of the firm or team contact.

This is neither a formal request for bids, nor an offer by the District to contract with any party responding to this request. The District reserves the right to reject any and all proposals.

A full copy of the invitation must be downloaded from the District's web site at: www.ousd.org, under the Department of Facilities Planning and Management subheading Bid and Requests for Proposals.

The District reserves the right to reject any and all proposals.

RUN DATES:

Thursday SBE Weekly Newspaper:

7/14/2016 = \$468

AND

E-Newsletter:

MONDAY

7-11-2016 = Complimentary run

AND

Complimentary ad on our website

RFP - CONSTRUCTION MANAGEMENT SERVICES

Responses - Thursday, August 18, 2016 4:00PM

	<u>COMPANY</u>	<u># of Submissions</u>	<u>EMAIL</u>
1	Cordoba Corporation	5 copies 1 unbound	rmartinez@cordabacorp.com
2	Cumming	5 copies 1 unbound	jolsson@ccorpusa.com
3	MCCarthy Building Companies	5 copies 1 unbound	knewlon@mccarthy.com
4	Miller & Associates Architecture	5 copies 1 unbound	tmiller@miller-assoc.net
5	SGI Construction Management	5 copies 1 unbound	lance.jackson@ousd.org
6	WLC Construction Services	5 copies 1 unbound	paul@wlccs.com
7			
8			
9			
10			
11			
12			
13			
14			
15			

RFP CM Services Interviews – September 7th

Interview Panel: Cesar Monterrosa, Joe Dominguez, Kenya Chatman, David Colbert

9:00 am– 10:00 am - Cordoba Corporation

10:15 am – 11:15 am – Cumming Corporation

11:30 am – 12:30 pm - McCarthy

12:30 pm – 1:29 pm - Lunch

1: 30 pm – 2: 30 pm - SGI Construction



November 10, 2016

USA MAIL & EMAIL

Cumming Corporation
Attn: John Olsson
475 Sansome Street, Suite 520
San Francisco, CA 94111

Dear Mr. Olsson:

SUBJECT: RFP- CONSTRUCTION MANAGEMENT SERVICES

Thank you for submitting a proposal in response to our RFP. The Evaluation panel, using the criteria outlined in the RFP for both the contents of your proposal and your presentation during the interview has completed its review.

Congratulations, the evaluation panel was impressed by your proposal and presentation and your team received the panel's highest evaluation. We were fortunate to have a very competitive field to evaluate. Representatives of Oakland Unified School District's Facilities Planning and Management will be in contact shortly to discuss specifics associated with development of a project specific scope of work and fee proposal.

Thank you again for your participation in our selection process.

Yours truly,

Tadashi Nakadegawa
Director of Facilities Planning and Management

Cc: Joe Dominguez, Deputy Chief, of Facilities Planning & Management
Cesar Monterrosa, Ed. D., MS. CM., Director of Facilities Planning & Management
Kenya Chatman, Facilities Coordinator

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/19/2017

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 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 rights to the certificate holder in lieu of such endorsement(s).


PRODUCER Marsh & McLennan Insurance Agency LLC Company 1 Polaris Way, Ste 300 License #0H18131 Aliso Viejo, CA 92656	CONTACT NAME: Angela Lin PHONE (A/C, No, Ext): 949-540-6910 E-MAIL ADDRESS: Angela.Lin@MarshMMA.com	FAX (A/C, No):													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : National Fire Ins. Of Hartford</td> <td>20478</td> </tr> <tr> <td>INSURER B : Continental Casualty</td> <td>20443</td> </tr> <tr> <td>INSURER C : Continental Insurance Company</td> <td>35289</td> </tr> <tr> <td>INSURER D : American Casualty Co. of Reading, PA</td> <td>20427</td> </tr> <tr> <td>INSURER E : ACE American Insurance Company</td> <td>22667</td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : National Fire Ins. Of Hartford	20478	INSURER B : Continental Casualty	20443	INSURER C : Continental Insurance Company	35289	INSURER D : American Casualty Co. of Reading, PA	20427	INSURER E : ACE American Insurance Company	22667	INSURER F :
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A : National Fire Ins. Of Hartford	20478														
INSURER B : Continental Casualty	20443														
INSURER C : Continental Insurance Company	35289														
INSURER D : American Casualty Co. of Reading, PA	20427														
INSURER E : ACE American Insurance Company	22667														
INSURER F :															

INSURED Cumming Construction Management, Inc.
25220 Hancock Avenue
Suite 440
Murrieta, CA 92562

COVERAGES CERTIFICATE NUMBER: 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.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			6056835935	12/31/2017	12/31/2018	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$15,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
B	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS			6056835949	12/31/2017	12/31/2018	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION \$10,000			6020879487	12/31/2017	12/31/2018	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			6056835966 (CA)	12/31/2017	12/31/2018	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER
D	Y/N <input checked="" type="checkbox"/> N N/A			6056835952 (AOS)	12/31/2017	12/31/2018	E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
E	Professional Liability Retro: 11/7/2006			EONG23632688012	12/31/2017	12/31/2018	Limit: \$5,000,000 Each Claim / Aggregate Deductible: \$150,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Re: Construction Management - All OUSD projects. The District, the Construction Manager, their representatives, consultants, trustees, officers, officials, employees, agents, and volunteers are named as additional insured, where required by written contract, per the attached. This insurance is primary and non-contributory. 30 day notice of cancellation will be provided as respects General Liability and Workers Compensation per the attached. Notice of Cancellation endorsement for Automobile Liability to follow upon receipt from carrier. There are no exclusions for Sexual Abuse and Molestation.

CERTIFICATE HOLDER Oakland Unified School District Attn: Risk Management 955 High Street Oakland, CA 94601-0000	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. AUTHORIZED REPRESENTATIVE 
--	--

INSURED: Cumming Construction Management, Inc.

POLICY #: 6056835935

POLICY PERIOD: 12/31/2017

TO: 12/31/2018



General Liability Extension Endorsement

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

TABLE OF CONTENTS
1. Additional Insureds
2. Additional Insured - Primary And Non-Contributory To Additional Insured's Insurance
3. Bodily Injury – Expanded Definition
4. Broad Knowledge of Occurrence/ Notice of Occurrence
5. Broad Named Insured
6. Estates, Legal Representatives and Spouses
7. Expected Or Intended Injury – Exception for Reasonable Force
8. In Rem Actions
9. Incidental Health Care Malpractice Coverage
10. Joint Ventures/Partnership/Limited Liability Companies
11. Legal Liability – Damage To Premises
12. Medical Payments
13. Non-owned Aircraft Coverage
14. Non-owned Watercraft
15. Personal And Advertising Injury – Discrimination or Humiliation
16. Personal And Advertising Injury - Contractual Liability
17. Property Damage - Elevators
18. Supplementary Payments
19. Unintentional Failure To Disclose Hazards
20. Waiver of Subrogation – Blanket



General Liability Extension Endorsement

1. ADDITIONAL INSURED

- a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs A. through K. below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) ~~is~~ currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) ~~was~~ executed prior to:

(a) ~~the~~ bodily injury or property damage; or

(b) ~~the~~ offense that caused the personal and advertising injury,

for which such additional insured seeks coverage.

- b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph A. through K. below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. ~~premises~~ such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

~~provided~~ that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of ~~a premises~~ co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury, property damage or personal and advertising injury** as co-owner of such premises.

C. Grantor of Franchise

Any person or organization that has granted a franchise to a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** as grantor of a franchise to the **Named Insured**.

D. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the occurrence giving rise to such **bodily injury, property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

E. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the occurrence giving rise to such **bodily injury or property**



General Liability Extension Endorsement

damage, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the occurrence giving rise to such **bodily injury, property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

H. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization, but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, ~~hoistway~~ openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

I. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:
 - a. the **Named Insured's** acts or omissions; or
 - b. the acts or omissions of those acting on the **Named Insured's** behalf,



General Liability Extension Endorsement

~~in~~ the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.

2. The coverage granted by this paragraph does not apply to **bodily injury or property damage included within the products-completed operations hazard.**

J. Vendor

Any person or organization but only with respect to such person or organization's liability for **bodily injury or property damage** arising out of **your products** which are distributed or sold in the regular course of such person or organization's business, provided that:

1. The coverage granted by this paragraph does not apply to:
 - a. **bodily injury or property damage** for which such person or organization is obligated to pay **damages** by reason of the assumption of liability in a contract or agreement unless such liability exists in the absence of the contract or agreement;
 - b. any express warranty unauthorized by the **Named Insured**;
 - c. any physical or chemical change in any product made intentionally by such person or organization;
 - d. repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - e. any failure to make any inspections, adjustments, tests or servicing that such person or organization has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
 - f. demonstration, installation, servicing or repair operations, except such operations performed at the such person or organization's premises in connection with the sale of a product;
 - g. products which, after distribution or sale by the **Named Insured**, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for such person or organization; or
 - h. **bodily injury or property damage** arising out of the sole negligence of such person or organization for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (1) ~~the~~ exceptions contained in Subparagraphs d. or f. above; or
 - (2) such inspections, adjustments, tests or servicing as such person or organization has agreed with the **Named Insured** to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
2. This Paragraph J. does not apply to any insured person or organization, from whom the **Named Insured** has acquired such products, nor to any ingredient, part or container, entering into, accompanying or containing such products.
3. This Paragraph J. also does not apply:
 - a. to any vendor specifically scheduled as an additional insured by endorsement to this **Coverage Part**;
 - b. to any of **your products** for which coverage is excluded by endorsement to this **Coverage Part**; nor
 - c. if **bodily injury or property damage** included within the **products-completed operations hazard** is excluded by endorsement to this **Coverage Part**.

K. Other Person Or Organization

Any person or organization who is not an additional insured under Paragraphs A. through J. above. Such additional insured is an **Insured** solely for **bodily injury, property damage or personal and advertising injury** for which such additional insured is liable because of the **Named Insured's** acts or omissions.



General Liability Extension Endorsement

The coverage granted by this paragraph does not apply to any person or organization:

1. for **bodily injury, property damage, or personal and advertising injury** arising out of the rendering or failure to render any professional service;
2. ~~for~~ **bodily injury or property damage** included within the **products-completed operations hazard**; nor
3. ~~who~~ is specifically scheduled as an additional insured on another endorsement to this **Coverage Part**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

- A. The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision ~~2~~, the additional insured's own insurance means insurance on which the additional insured is a named insured.

- B. With respect to persons or organizations that qualify as additional insureds pursuant to paragraph 1.K. of this endorsement, the following sentence is added to the paragraph above:

Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY - EXPANDED DEFINITION

Under **DEFINITIONS** the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** is amended to add the following:

A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence, offense or claim** only when the **occurrence, offense or claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or to an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence, offense or claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury or property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence, offense or claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence, offense or claim**.

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph 3. ~~jd~~ its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph 4. ~~below~~, any organization in which a **Named Insured** has management control:

- a. on the effective date of this **Coverage Part**; or
- b. by reason of a **Named Insured** creating or acquiring the organization during the **policy period**,



General Liability Extension Endorsement

qualifies as a **Named Insured**, provided that there is no other similar liability insurance, whether primary, contributory, excess, contingent or otherwise, which provides coverage to such organization, or which would have provided coverage but for the exhaustion of its limit, and without regard to whether its coverage is broader or narrower than that provided by this insurance.

But this **BROAD NAMED INSURED** provision does not apply to:

- (a) any partnership, limited liability company or joint venture; or
- (b) any organization for which coverage is excluded by another endorsement attached to this Coverage Part.

For the purpose of this provision, management control means:

- A. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation; or
 - B. having the right, pursuant to a written trust agreement, to protect, control the use of, encumber or transfer or sell property held by a trust.
4. With respect to organizations which qualify as **Named Insureds** by virtue of Paragraph 3. above, this insurance does not apply to:
- a. **bodily injury or property damage** that first occurred prior to the date of management control, or that first occurs after management control ceases; nor
 - b. **personal or advertising injury** caused by an offense that first occurred prior to the date of management control or that first occurs after management control ceases.
5. The insurance provided by this Coverage Part applies to **Named Insureds** when trading under their own names or under such other trading names or doing-business-as names (dba) as any **Named Insured** should choose to employ.

6. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives and spouses of any natural person insured shall also be insured under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, and spouses only for claims arising solely out of their capacity or status as such and, in the case of a spouse, where such claim seeks damages from marital community property, jointly held property or property transferred from such natural person insured to such spouse. No coverage is provided for any act, error or omission of an estate, heir, legal representative, or spouse outside the scope of such person's capacity or status as such, provided however that the spouse of a natural person Named Insured and the spouses of members or partners of joint venture or partnership Named Insureds are Insureds with respect to such spouses' acts, errors or omissions in the conduct of the Named Insured's business.

7. EXPECTED OR INTENDED INJURY – EXCEPTION FOR REASONABLE FORCE

Under COVERAGES, Coverage A – Bodily Injury And Property Damage Liability, the paragraph entitled Exclusions is amended to delete the exclusion entitled Expected or Intended Injury and replace it with the following:

This insurance does not apply to:

Expected or Intended Injury

Bodily injury or property damage expected or intended from the standpoint of the Insured. This exclusion does not apply to **bodily injury or property damage** resulting from the use of reasonable force to protect persons or property.

8. IN REM ACTIONS

A quasi *in rem* action against any vessel owned or operated by or for the **Named Insured**, or chartered by or for the **Named Insured**, will be treated in the same manner as though the action were *in personam* against the **Named Insured**.



General Liability Extension Endorsement

9. INCIDENTAL HEALTH CARE MALPRACTICE COVERAGE

Solely with respect to **bodily injury** that arises out of a **health care incident**:

A. Under **COVERAGES, Coverage A – Bodily Injury And Property Damage Liability**, the **Insuring Agreement** is amended to replace Paragraphs **1.b.(1)** and **1.b.(2)** with the following:

b. This insurance applies to **bodily injury** provided that the professional health care services are incidental to the **Named Insured's** primary business purpose, and only if:

(1) ~~such~~ **bodily injury** is caused by an occurrence that takes place in the **coverage territory**.

(2) ~~the~~ **bodily injury** first occurs during the **policy period**. All **bodily injury** arising from an occurrence will be deemed to have occurred at the time of the first act, error, or omission that is part of the occurrence; and

B. Under **COVERAGES, Coverage A – Bodily Injury And Property Damage Liability**, the paragraph entitled **Exclusions** is amended to:

i. add the following to the **Employers Liability** exclusion:

This exclusion applies only if the **bodily injury** arising from a **health care incident** is covered by other liability insurance available to the **Insured** (or which would have been available but for exhaustion of its limits).

ii. ~~delete~~ the exclusion entitled **Contractual Liability** and replace it with the following:

This insurance does not apply to:

Contractual Liability

~~the Insured's actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees.~~

iii. ~~add~~ the following additional exclusions.

This insurance does not apply to:

Discrimination

~~any actual or alleged discrimination, humiliation or harassment, including but not limited to claims based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual orientation.~~

Dishonesty or Crime

~~Any actual or alleged dishonest, criminal or malicious act, error or omission.~~

Medicare/Medicaid Fraud

~~any actual or alleged violation of law with respect to Medicare, Medicaid, Tricare or any similar federal, state or local governmental program.~~

Services Excluded by Endorsement

~~Any health care incident for which coverage is excluded by endorsement.~~

C. **DEFINITIONS** is amended to:

i. add the following definitions:

Health care incident means an act, error or omission by the **Named Insured's employees or volunteer workers** in the rendering of:

a. **professional health care services** on behalf of the **Named Insured** or



General Liability Extension Endorsement

- b. Good Samaritan services rendered in an emergency and for which no payment is demanded or received.

Professional health care services means any health care services or the related furnishing of food, beverages, medical supplies or appliances by the following providers in their capacity as such but solely to the extent they are duly licensed as required:

- a. Physician;
- b. Nurse;
- c. Nurse practitioner;
- d. Emergency medical technician;
- e. Paramedic;
- f. Dentist;
- g. Physical therapist;
- h. Psychologist;
- i. Speech therapist;
- j. Other allied health professional; or

Professional health care services does not include any services rendered in connection with human clinical trials or product testing.

- ii. ~~delete~~ the definition of **occurrence** and replace it with the following:

Occurrence means a **health care incident**. All acts, errors or omissions that are logically connected by any common fact, circumstance, situation, transaction, event, advice or decision will be considered to constitute a single **occurrence**;

- iii. ~~amend~~ the definition of **Insured** to:

- a. add the following:

- ~~the Named Insured's employees~~ are **Insureds** with respect to:

(1) **bodily injury** to a **co-employee** while in the course of the **co-employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business; and

(2) **bodily injury** to a **volunteer worker** while performing duties related to the conduct of the **Named Insured's** business;

~~when~~ such **bodily injury** arises out of a **health care incident**.

- ~~the Named Insured's volunteer workers~~ are **Insureds** with respect to:

(1) **bodily injury** to a **co-volunteer worker** while performing duties related to the conduct of the **Named Insured's** business; and

(2) **bodily injury** to an **employee** while in the course of the **employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business;

~~when~~ such **bodily injury** arises out of a **health care incident**.

- b. delete Subparagraphs (a), (b), (c) and (d) of Paragraph 2.a.(1) of **WHO IS AN INSURED**.

- c. add the following:

Insured does not include any physician while acting in his or her capacity as such.



General Liability Extension Endorsement

- D. The **Other Insurance** condition is amended to delete Paragraph **b.(1)** in its entirety and replace it with the following:

Other Insurance

b. Excess Insurance

- (1) To the extent this insurance applies, it is excess over any other insurance, self insurance or risk transfer instrument, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by the **Named Insured** to be excess of this coverage.

10. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES

WHO IS AN INSURED is amended to delete its last paragraph and replace it with the following:

No person or organization is an **Insured** with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a **Named Insured** in the Declarations, except that if the **Named Insured** was a joint venturer, partner, or member of a limited liability company and such joint venture, partnership or limited liability company terminated prior to or during the policy period, such **Named Insured** is an **Insured** with respect to its interest in such joint venture, partnership or limited liability company but only to the extent that:

- a. any offense giving rise to **personal and advertising injury** occurred prior to such termination date, and the **personal and advertising injury** arising out of such offense first occurred after such termination date;
- b. the **bodily injury** or **property damage** first occurred after such termination date; and
- c. there is no other valid and collectible insurance purchased specifically to insure the partnership, joint venture or limited liability company.

11. LEGAL LIABILITY – DAMAGE TO PREMISES

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the first paragraph immediately following subparagraph (6) of the **Damage to Property** exclusion and replace it with the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to **property damage** (other than damage by fire) to premises rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, nor to the contents of premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. A separate limit of insurance applies to **Damage To Premises Rented To You** as described in **LIMITS OF INSURANCE**.

- B. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete its last paragraph and replace it with the following:

Exclusions c. through n. do not apply to damage by fire to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner, nor to damage to the contents of premises rented to a **Named Insured** for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in the **LIMITS OF INSURANCE** Section.

- C. **LIMITS OF INSURANCE** is amended to delete Paragraph 6. (the **Damage To Premises Rented To You** Limit) and replace it with the following:

6. Subject to Paragraph 5. above, (the **Each Occurrence Limit**), the **Damage To Premises Rented To You** Limit is the most the Insurer will pay under **COVERAGE A** for **damages** because of **property damage** to:

- a. any one premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with the permission of the owner; and
- b. contents of such premises if the premises is rented to the **Named Insured** for a period of 7 or fewer consecutive days.



General Liability Extension Endorsement

The ~~Damage To Premises Rented To You~~ Limit is \$200,000, ~~unless~~ a different ~~Damage to Premises Rented to You~~ Limit is shown in the Declarations.

- D. The **Other Insurance** Condition is amended to delete Paragraph ~~b.(1)(a)(ii)~~, and replace it with the following:
- (ii) That is property insurance for premises rented to a **Named Insured**, for premises temporarily occupied by the **Named Insured** with the permission of the owner, or for personal property of others in the **Named Insured's** care, custody or control;
- E. This Provision 10, ~~does~~ not apply if liability for damage to premises rented to a **Named Insured** is excluded by another endorsement attached to this **Coverage Part**.

12. MEDICAL PAYMENTS

- A. **LIMITS OF INSURANCE** is amended to delete Paragraph 7. (~~the~~ Medical Expense Limit) and replace it with the following:
7. Subject to Paragraph 5. above (~~the~~ Each Occurrence Limit), the Medical Expense Limit is the most the Insurer will pay under **Coverage C - Medical Payments** for all medical expenses because of **bodily injury** sustained by any one person. The Medical Expense Limit is the greater of:
- (1) \$15,000 unless a different amount is shown here: ~~0000000000000000~~; or
- (2) ~~the~~ amount shown in the Declarations for Medical Expense Limit.
- B. Under **COVERAGES, Coverage C - Medical Payments**, the **Insuring Agreement** is amended to replace Paragraph 1.a.(3)(b) with the following:
- (b) The expenses are incurred and reported to the Insurer within three years of the date of the accident; and
- This Paragraph B. does not apply to medical expenses incurred in the state of Missouri.

13. NON-OWNED AIRCRAFT

Under **COVERAGES, Coverage A - Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended as follows:

The exclusion entitled **Aircraft, Auto or Watercraft** is amended to add the following:

This exclusion does not apply to an aircraft not owned by any **Named Insured**, provided that:

1. the pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
2. ~~the~~ aircraft is rented with a trained, paid crew to the **Named Insured**; and
3. ~~the~~ aircraft is not being used to carry persons or property for a charge.

14. NON-OWNED WATERCRAFT

Under **COVERAGES, Coverage A - Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraph (2) of the exclusion entitled **Aircraft, Auto or Watercraft**, and replace it with the following.

This exclusion does not apply to:

- (2) a watercraft that is not owned by any **Named Insured**, provided the watercraft is:
- (a) ~~less~~ than 75 feet long; and
- (b) ~~not~~ being used to carry persons or property for a charge.



General Liability Extension Endorsement

15. PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION

- A. Under **DEFINITIONS**, the definition of **personal and advertising injury** is amended to add the following tort
- Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
- B. Under **COVERAGES, Coverage B – Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to:

1. ~~delete~~ the Exclusion entitled **Knowing Violation Of Rights Of Another** and replace it with the following:

This insurance does not apply to:

Knowing Violation of Rights of Another

Personal and advertising injury caused by or at the direction of the **Insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**. This exclusion shall not apply to discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is not done intentionally by or at the direction of:

(a) ~~the~~ **Named Insured**; or

(b) ~~any~~ **executive officer**, director, stockholder, partner, member or manager (if the **Named Insured** is a limited liability company) of the **Named Insured**.

2. ~~add~~ the following exclusions:

This insurance does not apply to:

Employment Related Discrimination

~~discrimination~~ or humiliation directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person by any **Insured**.

Premises Related Discrimination

~~discrimination~~ or humiliation arising out of the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any **Insured**.

Notwithstanding the above, there is no coverage for fines or penalties levied or imposed by a governmental entity because of discrimination.

The coverage provided by this **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization whose status as an **Insured** derives solely from

- Provision 1. **ADDITIONAL INSUREDS** of this endorsement; or
- ~~attachment~~ of an additional insured endorsement to this **Coverage Part**.

16. PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY

- A. Under **COVERAGES, Coverage B –Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Contractual Liability** and replace it with the following:

This insurance does not apply to:

Contractual Liability

~~Personal and advertising injury for which the Insured has assumed liability in a contract or agreement.~~

This exclusion does not apply to liability for **damages**:

- (1) ~~that~~ the **Insured** would have in the absence of the contract or agreement; or



General Liability Extension Endorsement

- (2) ~~assumed~~ in a contractor agreement that is an **insured contract** provided the offense that caused such **personal or advertising injury** first occurred subsequent to the execution of such **insured contract**. Solely for the purpose of liability assumed in an **insured contract**, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an **Insured** are deemed to be **damages** because of **personal and advertising injury** provided:
- (a) ~~liability~~ to such party for, or for the cost of, that party's defense has also been assumed in such **insured contract**; and
 - (b) ~~such~~ attorney fees and litigation expenses are for defense of such party against a civil or alternative dispute resolution proceeding in which covered **damages** are alleged.
- B. Solely for the purpose of the coverage provided by this paragraph, **DEFINITIONS** is amended to delete the definition of **insured contract** in its entirety, and replace it with the following:
- insured contract** means that part of a written contract or written agreement pertaining to the **Named Insured's** business under which the **Named Insured** assumes the tort liability of another party to pay for **personal or advertising injury** arising out of the offense of false arrest, detention or imprisonment. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- C. Solely for the purpose of the coverage provided by this paragraph, the following changes are made to the Section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**:
- 1. Paragraph 2.d. is replaced by the following:
 - d. The allegations in the **suit** and the information the Insurer knows about the offense alleged in such **suit** are such that no conflict appears to exist between the interests of the **Insured** and the interests of the indemnitee;
 - 2. The first unnumbered paragraph beneath Paragraph 2.f.(2)(b) is deleted and replaced by the following:

So long as the above conditions are met, ~~attorneys~~ fees incurred by the Insurer in the defense of that indemnitee, necessary litigation expenses incurred by the Insurer, and necessary litigation expenses incurred by the indemnitee at the Insurer's request will be paid as **defense costs**. Notwithstanding the provisions of Paragraph 2 of the Contractual Liability exclusion (as amended by this Endorsement), such payments will not be deemed to be **damages** for **personal and advertising injury** and will not reduce the limits of insurance.
- D. This **PERSONAL AND ADVERTISING INJURY - LIMITED CONTRACTUAL LIABILITY** Provision does not apply if Coverage B – **Personal and Advertising Injury Liability** is excluded by another endorsement attached to this **Coverage Part**.

17. PROPERTY DAMAGE – ELEVATORS

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended such that the **Damage to Your Product Exclusion** and subparagraphs (3), (4) and (6) of the **Damage to Property Exclusion** do not apply to **property damage** that results from the use of elevators.
- B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

18. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

- A. Paragraph 1.b. is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000 limit; and



General Liability Extension Endorsement

B. Paragraph 1.d. is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

19. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

20. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the ~~Transfer Of Rights Of Recovery Against Others To Us~~ Condition is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. ~~the~~ **Named Insured's** ongoing operations; or
2. ~~your~~ **work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. ~~is~~ in effect or becomes effective during the term of this **Coverage Part**; and
2. ~~was~~ executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the claim.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

INSURED: Cumming Construction Management, Inc.

POLICY #: 6056835949

POLICY
PERIOD:

12/31/2017

TO: 12/31/2018



ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY

It is understood and agreed that this endorsement amends the **BUSINESS AUTO COVERAGE FORM** as follows:

SCHEDULE

ANY PERSON OR ORGANIZATION FOR WHOM OR WHICH YOU ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT TO OBTAIN THIS WAIVER FROM US. YOU MUST AGREE TO THAT REQUIREMENT PRIOR TO LOSS

1. In conformance with paragraph **A.1.c.** of **Who Is An Insured** of Section II – LIABILITY COVERAGE, the person or organization scheduled above is an insured under this policy.
2. The insurance afforded to the additional insured under this policy will apply on a primary and non-contributory basis if you have committed it to be so in a written contract or written agreement executed prior to the date of the “accident” for which the additional insured seeks coverage under this policy.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

INSURED:

POLICY#:

POLICY PERIOD:

TO:



Changes - Notice of Cancellation or Material Restriction Endorsement

This endorsement modifies insurance provided under the following:

- COMMERCIAL GENERAL LIABILITY COVERAGE PART
- EMPLOYEE BENEFITS LIABILITY COVERAGE PART
- LIQUOR LIABILITY COVERAGE PART
- OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
- PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
- RAILROAD PROTECTIVE LIABILITY COVERAGE PART
- STOP GAP LIABILITY COVERAGE PART
- TECHNOLOGY ERRORS AND OMISSIONS LIABILITY COVERAGE PART
- SPECIAL PROTECTIVE AND HIGHWAY LIABILITY POLICY – NEW YORK DEPARTMENT OF TRANSPORTATION

SCHEDULE	
Number of days notice (other than for nonpayment of premium):	
Number of days notice for nonpayment of premium:	
Name of person or organization to whom notice will be sent:	
Address:	

If no entry appears above, the number of days notice for nonpayment of premium will be 10 days.

It is understood and agreed that in the event of cancellation or any material restrictions in coverage during the **policy period**, the Insurer also agrees to mail prior written notice of cancellation or material restriction to the person or organization listed in the above Schedule. Such notice will be sent prior to such cancellation in the manner prescribed in the above Schedule.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

INSURED:

POLICY#:

POLICY PERIOD:

TO:



CC68021A
(Ed. 02/13)

NOTICE OF CANCELLATION TO CERTIFICATEHOLDERS

It is understood and agreed that:

If you have agreed under written contract to provide notice of cancellation to a party to whom the Agent of Record has issued a Certificate of Insurance, and if we cancel a policy term described on that Certificate of Insurance for any reason other than nonpayment of premium, then notice of cancellation will be provided to such Certificateholders at least 30 days in advance of the date cancellation is effective.

If notice is mailed, then proof of mailing to the last known mailing address of the Certificateholder on file with the Agent of Record will be sufficient to prove notice.

Any failure by us to notify such persons or organizations will not extend or invalidate such cancellation, or impose any liability or obligation upon us or the Agent of Record.



DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

Project Information

Project Name	Facilities Planning & Management	Site	918
---------------------	----------------------------------	-------------	-----

Basic Directions

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

Attachment Checklist	<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
-----------------------------	---

Contractor Information

Contractor Name	Cumming Construction Management, Incorporated	Agency's Contact	John Olsson		
OUSD Vendor ID #	V071275	Title	Project Manager		
Street Address	530 Lakeside Dr. Suite 140	City	Sunnyvale	State	CA Zip 94085
Telephone	408-769-6942	Policy Expires			
Contractor History	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		
OUSD Project #	00918				

Term

Date Work Will Begin	8-23-2018	Date Work Will End By <small>(not more than 5 years from start date)</small>	6-30-2020
-----------------------------	-----------	--	-----------

Compensation

Total Contract Amount	\$	Total Contract Not To Exceed	\$2,024,705.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$
Other Expenses		Requisition Number	

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	9350 Org Key	Object Code	Amount
9350	Fund 21, Measure J	210-935-0-9000-8500-5825-918-9180-9905-9999-99999	5825	\$2,024,705.00

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.

	Division Head	Phone	510-535-7038	Fax	510-535-7082
1.	Director, Facilities Planning and Management				
	Signature	Date Approved	7/31/18		
2.	General Counsel, Department of Facilities Planning and Management				
	Signature	Date Approved	8/13/18		
3.	Deputy Chief, Facilities Planning and Management				
	Signature	Date Approved			
4.	Senior Business Officer, Board of Education				
	Signature	Date Approved			
5.	President, Board of Education				
	Signature	Date Approved			