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**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Tadashi Nakadegawa, Deputy Chief, Division of Facilities Planning and Management

Board Meeting Date August 25, 2021

Subject Construction Management Agreement – Cumming Management Group, Inc. -
Division of Facilities Planning and Management

Action Requested Approval by the Board of Education of Construction Management Agreement between the District and Cumming Management Group, Inc., Oakland, California, for the latter to provide planning, coordination and construction management services through the completion of the District’s Measure J and commencement of Measure Y Bond Programs for the Construction Management Services for Facilities Planning & Management Project, in the not to exceed amount of \$900,000.00, which includes a not-to-exceed amount of \$45,000.00 for reimbursable expenses, and a not-to-exceed amount of \$75,000.00 for additional services, as the selected consultant, with work scheduled to commence on August 26, 2021, and scheduled to last until June 30, 2026, pursuant to the Agreement.

Discussion Consultant will provide Construction Management Services for the District. Consultant was selected based on their demonstrated competence and professional qualifications. (Government Code §4526)

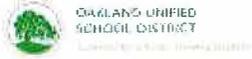
LBP (Local Business Participation Percentage) 50.0%

Recommendation Approval by the Board of Education of Construction Management Agreement between the District and Cumming Management Group, Inc., Oakland, California, for the latter to provide planning, coordination and construction management services through the completion of the District’s Measure J and commencement of Measure Y Bond Programs for the Construction Management Services for Facilities Planning & Management Project, in the not to exceed amount of \$900,000.00, which includes a not-to-exceed amount of \$45,000.00 for reimbursable expenses, and a not-to-exceed amount of \$75,000.00 for additional services, as the selected consultant, with work scheduled to commence on August 26, 2021, and scheduled to last until June 30, 2026, pursuant to the Agreement.

Fiscal Impact Fund 21, Measure J

Attachments

- Agreement
- Proposal & Fee schedule
- Insurance Certificate



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

Legislative File ID No. 21-1455

Department: Facilities Planning and Management

Vendor Name: Cumming Management Group, Inc.

Project Name: Construction Management Agreement

Project No.: 00918

Contract Term: Intended Start: August 26, 2021

Intended End: 6-30-2026

Total Cost Over Contract Term: \$900,000.00

Approved by: Tadashi Nakadegawa

Is Vendor a local Oakland Business or has it met the requirements of the

Local Business Policy? Yes (No if Unchecked)

How was this contractor or vendor selected?

Cumming Management Group, Inc. was selected through an RFP process that was issued on April 15, 2021.

Summarize the services or supplies this contractor or vendor will be providing.

Cumming Management Group, Inc. will provide planning, coordination, and construction management services through the completion of the District's Measure J and commencement of Measure Y Bond Programs. Service may include any or all the following: planning, coordination, and construction management; and District staff augmentation for construction management services.

Was this contract competitively bid? Check box for "Yes" (If "No," leave box unchecked)

If "No," please answer the following questions:

1) How did you determine the price is competitive?

RFP process includes review/scoring of proposals submitted. The District received proposals and interviewed other vendors. Cumming Management Group, Inc. price was fair and reasonable compared to the prices submitted by the other responding consultants.

2) Please check the competitive bidding exception relied upon:

Construction Contract:

- Price is at or under UPCCAA threshold of \$60,000 (as of 1/1/19)
- CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- Emergency contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- No advantage to bidding – *contact legal counsel to discuss if applicable*
- Sole source contractor – *contact legal counsel to discuss if applicable*
- Completion contract – *contact legal counsel to discuss if applicable*
- Lease-leaseback contract RFP process – *contact legal counsel to discuss if applicable*
- Design-build contract RFP process – *contact legal counsel to discuss if applicable*
- Energy service contract – *contact legal counsel to discuss if applicable*
- Other: _____ – *contact legal counsel to discuss if applicable*

Consultant Contract:

- Construction project manager, land surveyor, or environmental services – selected based on demonstrated competence and professional qualifications (Government Code §4526)
- Architect or engineer – use of a fair, competitive RFP selection process (Government Code §§4529.10 et seq.)
- Architect or engineer when state funds being used – use of competitive process consistent with Government Code §§4526-4528 (Education Code §17070.50)
- Other professional or specially trained services or advice – no bidding or RFP required (Public Contract Code §20111(d) and Government Code §53060) – *contact legal counsel to discuss if applicable*
- For services other than above, the cost of services is \$96,700 or less (as of 1/1/21)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*

Purchasing Contract:

- Price is at or under bid threshold of \$96,700 (as of 1/1/21)
- Certain instructional materials (Public Contract Code §20118.3)
- Data processing systems and supporting software – choose one of three lowest bidders (Public Contract Code §20118.1)

- Electronic equipment – competitive negotiation (Public Contract Code §20118.2) – *contact legal counsel to discuss if applicable*
- CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- Piggyback contract for purchase of personal property (Public Contract Code §20118) – *contact legal counsel to discuss if applicable*
- Supplies for emergency construction contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*
- Other: _____

Maintenance Contract:

- Price is at or under bid threshold of \$96,700 (as of 1/1/21)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss*
- Other: _____

3) Explain in detail the facts that support the applicability of the exception marked above:

- Vendor was selected through a competitive RFP process based on its demonstrated competence and professional qualifications to service the District in specified work. The District reviewed the vendor’s qualifications and chose the vendor based on its quality of work on other projects and is qualified to perform the requested services.

CONSTRUCTION MANAGEMENT AGREEMENT

This Construction Management Agreement (“Agreement”) is made and entered into effective **August 26, 2021**, by and between the Oakland Unified School District (“District”) and **Cumming Management Group, Inc.** (“Construction Manager”).

NOW, THEREFORE, the parties agree as follows:

1. RETENTION OF CONSTRUCTION MANAGER. District and Construction

Manager agree that Construction Manager shall be retained to assist District staff in the development and construction of some or all construction sites, improvements, and contracts for the District under Measure Y (the “Projects,” with a single one referred to as “Project”), including but not limited to Bond Projects listed in *Exhibit B*. A Project may consist of general planning services for the overall construction program rather than a particular construction site or improvement. Construction Manager shall perform its services under this Agreement through June 30, 2026, for every Project that is assigned to it by the District in writing (“Assignment”), and the Construction Manager shall be one of the District's representatives and agents for each such Project.

To be valid and enforceable, each Assignment shall be signed by the District’s Deputy Chief of Facilities and the Construction Manager’s Program Manager prior to performance of any of the services required for the Project being assigned. Each Assignment shall state (A) a schedule for performance of the services required for the Project being assigned; (B) the number of full-time employees that the Construction Manager shall assign to the Project; (C) a detailed description of the scope of services required for the Assignment; (D) Construction Manager’s total not-to-exceed compensation for its Basic Services on the Project, which shall be based on Construction Manager’s written estimate of the maximum total cost of its Basic Services on the Project, which estimate shall include contingency compensation in the event that more time and costs than originally anticipated may be necessary to complete the Basic Services; (E) Construction Manager’s total not-to-exceed compensation for its Reimbursable Expenses on the Project; and (F) Construction Manager’s total not-to-exceed compensation for its Additional Services on the Project.

The not-to-exceed amount of compensation in an Assignment for Basic Services shall not, when combined with the not-to-exceed amounts of compensation for Basic Services in all previous Assignments, exceed the not-to-exceed amount of compensation for Basic Services under this Agreement (see Sections 2.A, below). The not-to-exceed amount of compensation in an Assignment for Reimbursable Expenses shall not, when combined with the not-to-exceed amounts of compensation for Reimbursable Expenses in all previous Assignments, exceed the not-to-exceed amount of compensation for Reimbursable Expenses under this Agreement (see Sections 2.B, below). The not-to-exceed amount of compensation in an Assignment for Additional Services shall not, when combined with the not-to-exceed amounts of compensation for Additional Services in all previous Assignments, exceed the not-to-exceed amount of compensation for Additional Services under this Agreement (see Sections 2.F, below).

Prior to execution of an Assignment, Construction Manager shall submit its calculations, and any other documentation required, to reasonably support its estimate of the total cost of its services for the assigned Project. This documentation shall include the anticipated work hours required to provide Construction Management services for each phase of the assigned Project, including but not limited to pre-design, design, plan check, bidding, construction, and post-construction. If Construction Manager reaches a not-to-exceed amount set forth in an Assignment before its services under the Assignment are complete, Construction Manager shall complete its services under the Assignment and shall not be entitled to any further compensation related to that not-to-exceed amount.

However, the execution and approval of this Agreement is not a guarantee that a Project will be assigned to Construction Manager.

The term of this Agreement shall be through final completion of the Projects and all applicable warranty periods, which includes completion of all financial transactions (i.e., all progress and final payments, release of retention, change orders and any claims), except that such term may not exceed five years from the effective date of this Agreement.

Construction Manager, and its subconsultants, shall not be allowed to bid on any of the Projects' construction work.

Construction Manager shall comply with any applicable prevailing wage laws.

2. PAYMENT OF CONSTRUCTION MANAGER.

A. For satisfactory performance of the services required by this Agreement ("Basic Services") for all Assignments under this Agreement, Construction Manager shall be compensated according to its hourly rate schedule (see *Exhibit A*, attached) and the hours worked (measured in tenths of an hour). Construction Manager's total compensation for its Basic Services on all Assignments combined under this Agreement shall not exceed **Seven Hundred Eighty Thousand dollars No/100(\$780,000.00)**.

B. District shall reimburse Construction Manager for reimbursable expenses, as defined below, as provided in each Assignment for a particular Project. Reimbursable expenses are those out-of-pocket expenses Construction Manager directly incurs in performing this Agreement. Reimbursable expenses for this Project are limited to job office/trailer, site move in/out, trailer utilities, phone, phone system, fax, copier, miscellaneous blueprints, postage, messenger, computers, vehicle mileage, supplies, furniture, preconstruction expense, and miscellaneous expense. Reimbursable expenses do not include indirect costs, such as general overhead (for example, home office overhead, or insurance premiums), for which Construction Manager must pay out of its compensation for services under Section A., above. Reimbursable expenses do not include general conditions construction work (including but not limited to equipment rentals, temporary toilets, dust control, temporary barricades, site security, worker safety, temporary water, temporary power, and janitorial and debris services), which shall be included in the bid package to be awarded. Total compensation to Construction Manager for

Reimbursable Expenses on all Assignments combined under this Agreement shall not exceed Forty-five thousand dollars (\$45,000.00).

C. For each Assignment, Construction Manager shall submit monthly invoices for its time and reimbursable expenses. The invoices shall list the employees, their services performed each day, their hours spent on each service, and all reimbursable expenses for the previous calendar month. If District disputes a portion of the invoice, it shall notify Construction Manager within twenty (20) days and meet and confer with Construction Manager to resolve the dispute. District shall pay the undisputed amount of any invoice within thirty (30) days of receipt of the invoice. Failure of District to dispute an invoice within twenty (20) days shall not act as a waiver of District's rights to later challenge the validity of the invoice and to withhold the potentially invalid portion.

D. For any preconstruction phase of Construction Manager's work, Construction Manager may only invoice fifteen percent (15%) of the total not-to-exceed compensation.

E. District may withhold from any payments to Construction Manager for an Assignment to the extent that Construction Manager's wrongful acts or omissions under any Assignment under the Agreement caused District to incur damages or costs, including but not limited to withholding the full amount of any change order necessitated by an error or omission in the Contract Documents. ("Contract Documents" means all documents that are incorporated into the construction agreement between the District and the Contractor for the Project, including plans and specifications; and "Contractor" means the prime contractor.)

F. Construction Manager may separately invoice, on an hourly basis, for services on a Project that it performs at District's written direction that are outside the scope of the services described in the Assignment for that Project ("Additional Services"). Prior to performing these services for a Project, Construction Manager must (1) provide District with written notice stating that the requested services are Additional Services and stating a not-to-exceed amount for performing the Additional Services, and (2) receive written authorization from the District to perform the Additional Services at the not-to-exceed amount of compensation. Invoices for Additional Services are also subject to the dispute procedures in Section 2.C., above. Construction Manager shall not be compensated for any Additional Services required as a result of Construction Manager's wrongful acts or omissions in breach of this Agreement, the applicable standard of care, or the law. Total compensation to Construction Manager for Additional Services on all Assignments combined under this Agreement shall not exceed Seventy-five Thousand dollars (\$75,000.00).

G. The total not-to-exceed price under this Agreement based on Sections 2.A, 2.B, and 2.F is \$900,000.00. District has the right to audit Construction Manager's records regarding any of the services Construction Manager performs for District on this Project.

3. DUTIES AND RESPONSIBILITIES OF CONSTRUCTION MANAGER.

A. General Duties and Responsibilities.

1. As may be directed by the District for a Project, Construction Manager will administer all phases of construction activities to achieve the completion of the construction contracts and the Project in accordance with the requirements of this Agreement and in accordance with the reasonable care of a professional construction manager in the circumstances of this Project. All services Construction Manager performs under this Agreement shall be conducted in a manner consistent with the terms of this Agreement and with the level of care and skill ordinarily exercised by construction managers, on similar projects in California with similar complexity and with similar agreements, who are specially qualified to provide the services the District requires. Construction Manager shall conduct all such services in conformance to, and compliance with, all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, the Americans with Disabilities Act (“ADA”), the California Public Contract Code, the California Civil Code, and the California Government Code. Construction Manager shall provide other reasonable and necessary services that assist District in maintaining the District’s budget and schedule. Construction Manager shall perform the services set forth in this Agreement as expeditiously as is consistent with the orderly progress of the Project, the applicable standard of care, the timelines of this Project and Agreement, and all applicable law.

2. Staffing. Construction Manager shall provide sufficient staffing to timely perform its duties and responsibilities under this Agreement, including coordination of the work to optimize efficiency and minimize conflict and interference between Contractor and, if applicable, Owner’s own forces or any separate contractors also on-site. Construction Manager shall provide sufficient on-site employees to perform its duties and responsibilities under this Agreement, as may be clarified in the Assignment for the Project. All of Construction Manager’s personnel shall be qualified to perform the services they provide for the Project. Construction Manager shall obtain District’s written approval of each employee of Construction Manager who provides services under this Agreement, and written approval for each change of employees who provides such services. District may, upon fifteen (15) days written notice, cause Construction Manager to remove a person from the Project if he/she has failed to perform to District’s satisfaction. Construction Manager shall provide a full-time Project manager during the construction phase with authority to commit resources of Construction Manager to monitor, manage and administer all aspects of this Agreement to help achieve the completion of all construction. Should additional employees be required to timely and fully perform all of the services required under this Agreement and/or to avoid delay occurring, Construction Manager shall provide them immediately.

3. Disclosure. Construction Manager shall disclose to District all of Construction Manager’s subconsultants that are performing services related to the Project. Construction Manager shall also disclose to District any compensation related to the Project that

Construction Manager receives from parties other than the District so that District may determine if there are any conflicts of interest.

4. Additional Services. If District directs Construction Manager to perform services related to the Project that are not within the scope of this Agreement, Construction Manager shall perform them and invoice the District for such services pursuant to Section 2.F.

5. Obligation to Perform. The Construction Manager shall provide all construction management duties and functions as specifically directed by the District, even if not specifically identified in this Agreement. The Construction Manager shall perform all tasks as directed by the District to complete the Project and Construction Manager's services. The Construction Manager may not cease performance of its services under this Agreement for any reason, including disputes with the District or an alleged breach of contract by the District. The Construction Manager acknowledges that its priority is to ensure completion of the Project on time and on, or under, the District's budget. If the Construction Manager believes that the District owes it additional compensation under this Agreement, the Construction Manager may submit a request for additional compensation, but the Construction Manager may not cease or reduce performance of its services for that reason.

B. Preconstruction, Design Review, and Bidding Phase.

The services to be provided during the Preconstruction, Design Review and Bidding Phases for the Project may include, but are not limited to the following: Review and recommendations during design development; preparation of conceptual and periodic estimates; budget assessment and cost containment advice; value engineering studies and recommendations; and constructability reviews.

1. Construction Management Plan. The Construction Manager shall prepare a construction management plan for the Project. The construction management plan shall (1) provide a preliminary evaluation of the District's schedule, cost and design requirements for the Project; (2) develop an anticipated construction schedule; (3) develop a preliminary cost estimate for each type of work contemplated by the Project; (4) clarify and delineate the Architect's duties, the Contractor's responsibilities, the District's responsibilities, the Construction Manager's responsibilities; and (5) set forth a plan for the administration of all work on the Project. The plan shall provide for Architect and District review and acceptance.

2. Preliminary Schedule. The Construction Manager shall prepare a preliminary critical path schedule for the Project using software showing construction activities, procurement and submittal activities, any other critical path activities, and sequencing and duration of the Contractor's work on the Project. The preliminary schedule shall specify the proposed starting and finishing dates for the contract and the dates by which certain construction activities and milestones must be complete. The Construction Manager shall submit the preliminary schedule to the District for review and approval. The preliminary schedule will be included in the bid package and will be the initial basis for the schedule during construction.

3. Project Construction Cost and District's Budget. The Construction Manager shall assist the Architect in preparing the Architect's initial and revised Project Construction Cost, which shall be estimates of the total construction costs to be paid by the District to the Contractor. All Project Construction Costs shall include a contingency for additional construction costs that may arise through higher bids than expected, future increases in construction costs, and change orders. The Project Construction Cost shall also provide cost breakdowns based on anticipated trades and/or subcontractors. The Construction Manager shall also approve in writing any Project Construction Cost the Architect submits. During the Architect's design phases, the Construction Manager shall assist Architect in ensuring that the Project Construction Cost remains equal to, or less than, the District's budget. The Construction Manager shall consult with the Architect and District to suggest reasonable adjustments in the Project scope, if any, and to suggest possible add/delete bid alternatives in the Contract Documents, to adjust the Project Construction Cost to conform to the District's budget.

4. Bid Package. The Construction Manager shall, with assistance from the Architect, prepare the bid package and ensure that all Project requirements (including general conditions) are included. Construction Manager will be responsible for assembly of the bid package and preparation of all cover information to assure that all items listed on the cover are included in the bid documents.

5. Pre-Bid Conferences. The Construction Manager shall, with the assistance of the Architect and the District, disseminate the bid package and conduct pre-bid conferences to familiarize bidders with the bid documents and management techniques. The Construction Manager shall also assist the Architect with responding to questions from prospective bidders, and with the issuance of addenda. If requested by the District, the Construction Manager shall assist the District in pre-qualifying bidders.

6. Project Meetings. The Construction Manager shall conduct Project meetings as needed, but on at least a weekly basis. The District may request more frequent meetings. The District, Architect and others shall attend these meetings. The meetings shall serve as a forum for the exchange of information concerning the Project and the review of design progress. The Construction Manager shall prepare and distribute minutes of these meetings to the District, Architect, and others in attendance.

7. Review of Contract Documents. Before the Architect submits the Contract Documents to the Division of the State Architect ("DSA"), the Construction Manager shall thoroughly and adequately review the Architect's proposed Contract Documents and make detailed written recommendations to the District and the Architect regarding: constructability; likelihood of resulting in accurate and complete bids; and general completeness, clarity, consistency, coordination, and cost-effectiveness. Construction Manager shall also make recommendations regarding value engineering, possible add/delete bid alternatives, timelines for construction and scheduling. Construction Manager shall provide all of the above recommendations to the District and the Architect in writing or as notations on the proposed Contract Documents and Contract Documents. The constructability review shall also ascertain whether the Contractor can construct the Project as depicted in the proposed Contract Documents,

and can do so without delays, disruptions, or additional costs. The constructability review shall include written confirmation that: (a) the Construction Manager's senior estimator has directly and thoroughly reviewed and approved all proposed Contract Documents. Construction Manager shall provide District with evidence of that review; (b) proposed Contract Documents requirements are consistent with, and conform to, the District's Project requirements; and (c) the various components of the proposed Contract Documents prepared by Architect and its design consultants are coordinated and consistent with each other so as to minimize conflicts within, or between, the components. In performing the reviews and making the recommendations, the Construction Manager shall not be assuming responsibility or liability, in whole or in part, for any aspect of the Project design, design requirements, design criteria or the substance or contents of the proposed Contract Documents. The Construction Manager may use building information modeling technology during the constructability review if District and Construction Manager believe it is advisable for the Project.

The District shall have the sole and exclusive discretion to accept some, all, or none of the constructability review comments. If the District accepts any of the constructability review comments and directs Architect to revise the design accordingly, then Construction Manager shall review the Architect's revised proposed Contract Documents to confirm that the accepted comments have been addressed in the proposed Contract Documents.

The Construction Manager shall review the Architect's Storm Water Pollution Prevention Plan, if any, and provide written recommendations to the District and Architect as to its adequacy.

8. Project Funding. The Construction Manager shall assist the District in preparing documents concerning the District's budget for use in obtaining or reporting on Project funding. The documents shall be prepared in a format approved by the District. The Construction Manager shall make recommendations to the District concerning revisions to the Project and Project Construction Cost that may result from design changes.

9. Schedule Reports. The Construction Manager shall prepare and distribute biweekly reports that compare actual progress with scheduled progress for the design phases of the Project.

10. Project Cost Reports. The Construction Manager shall prepare and distribute Project cost reports that shall indicate actual or estimated costs compared to the District's budget.

11. Bidding, Bid Opening, and Evaluation.

11.1 The Construction Manager shall develop and expedite bidding procedures for bid document issuance, bid tracking, and receipt of bids. The Construction Manager shall develop bidders' interest in the Project and shall maintain contact with potential bidders on a regular basis throughout the bid period. Construction Manager shall conduct a telephone campaign to encourage and maintain interest in bidding.

11.2 All construction work, including “general conditions” work, for the Project shall be competitively bid unless otherwise required by the District.

11.3 If the Project is funded with any State funds, Construction Manager shall comply with all applicable State Allocation Board (“SAB”) requirements.

11.4 The Construction Manager shall coordinate the preparation and placement of the notices and advertisements to solicit bids as required by law and in cooperation with the District and Architect. Architect may, with District’s written approval, delegate to Construction Manager: publication of the invitation to bid in the appropriate regional trade papers and publications devoted to Disabled Veteran Business Enterprises; and the preparation, and submission to OPSC, of the appropriate documentation of that publication.

11.5 The Construction Manager shall coordinate and expedite the preparation, assembly and delivery of bid documents and any addenda to the prospective bidders. This shall include the following, as applicable: arrange for printing, binding, wrapping and delivery of bid packages; and make follow-up calls to the prospective bidders. The Construction Manager shall administer the addenda process and shall provide a review of each addendum during the bid phase for time, cost, and constructability impact, and make appropriate comments or recommendations.

11.6 The Construction Manager shall include the following requirements in all proposed bid package documents: performance and payment bonds at 100% of the contract amount; all bond sureties must be admitted California surety insurers; and insurance in amounts and coverage as directed by the District.

11.7 The Construction Manager shall open and evaluate all bids received, and make a recommendation to the District for award of the contract or rejection of all bids. Construction Manager shall assist the District in determining bidders’ responsibility, by among other things, analyzing any questionnaires, interviewing, investigating and researching, and shall submit a written report to the District and Architect with information and recommendations. Construction Manager shall also submit a bid package summary that lists the name of the low bidder and the low bid amount. If applicable, the summary shall classify the bid according to SAB cost allowance categories; and when a bid includes work in more than one cost category, the summary shall assign an appropriate amount to each.

11.8 If the District authorizes re-bidding, the Construction Manager shall assist the Architect in revising the scope and the quality of work as may be required to reduce construction costs. The Construction Manager, without additional compensation, shall cooperate with the District and Architect as necessary to bring construction costs within the District’s budget.

11.9 Construction Manager shall certify in writing that all of the work in the plans and specifications for the Project is included in the bid package. If the bid

package does not include 100% of the work in the plans and specifications, the cost of the additional necessary work shall offset the Construction Manager's fees.

11.10 The Construction Manager shall not be a bidder or perform work for the successful bidder.

12. Proposal Evaluation and Solicitation. For work which need not be competitively bid, the Construction Manager shall solicit requests for proposals, evaluate all proposals received, and make recommendations to the District regarding the Contractor to be selected for such work.

13. Pre-Construction Conferences. With the Architect's assistance, the Construction Manager shall conduct pre-construction conferences with the successful bidder, which shall include providing the Contractor to the various reporting procedures and site rules prior to the commencement of actual construction. The Construction Manager shall obtain the certificates of insurance and bonds from the Contractor review and, if acceptable, approve them, and then forward them to the District.

14. Equipment Procurement. The Construction Manager shall recommend a schedule for the District's purchase, procurement and/or rental of owner-furnished materials and equipment required for the Project.

15. Communications. The Construction Manager shall develop a communication system to ensure clear communication between the District, the Construction Manager, the Architect, Contractor and other parties involved with the Project. In developing this communication system, the Construction Manager shall meet with the District, the Architect and others to determine the type of information to be reported, the reporting format and the desired frequency for distribution of the various reports.

C. Construction Phase.

1. Construction and Contract Administration. As may be requested by the District, the Construction Manager shall provide administrative, management, and related services as required to coordinate work of the Contractor with the activities and responsibilities of the Construction Manager, the District, and the Architect to complete the Project in accordance with the Contract Documents and this Agreement, within the District's budget, as well as within the District's cost, time, and quality objectives. As the District's representative on the construction site, the Construction Manager shall be the party to whom the Contractor submits all documents and information, including requests for information, submittals, shop drawings and proposed change orders. Construction Manager shall be responsible for administration of the Contract as set forth herein, and for managing the Contractor and its work to optimize efficiency and minimize conflict and interference between Contractor and, if applicable, District's own forces and separate contractors on-site. ("Contract" means a contract between the District and the Contractor for the Project, as reflected in the Contract Documents.) Construction Manager shall prepare and provide written monthly progress reports, including information on progress, problems, potential solutions,

schedules, and fiscal conditions. Construction Manager shall meet with District on an as-needed basis and at the District's request.

2. Project Site Meetings. The Construction Manager shall schedule and conduct preconstruction, construction and progress meetings to discuss all matters relevant to construction of the Project, including but not limited to procedures, progress, inspections, necessary corrective work, problems, requests for information, proposed change orders, and scheduling. During construction, the meetings shall occur at least weekly. The Construction Manager shall prepare and distribute detailed minutes to all attendees, the District and the Architect.

3. Budget Management and Cost Control. If the lowest responsible and responsive bid exceeds the Project Construction Cost, the District may consent to increasing the Project Construction Cost and/or the District's budget, or may authorize negotiations (if permissible), direct re-bidding of the bid package, or abandon the bid package or the Project, and Construction Manager shall assist in these activities. The Construction Manager shall prepare and distribute monthly Project cost reports that shall indicate actual or estimated costs compared to the Project Construction Cost and the District's budget, including a summary of the progress payments and the amounts of potential, proposed and actual change orders. The Construction Manager shall revise and refine the Project Construction Cost, incorporating changes as they occur and identifying variances between actual and budgeted or estimated costs. Construction Manager shall also make recommendations for eliminating future costs so the predicted Project Construction Cost to be incurred will be within the District's budget.

4. Schedule. The Construction Manager shall ensure that the bid package requires the Contractor to submit to Construction Manager a detailed critical path schedule before the Contractor's commencement of work on the Project site or within one (1) week of award of the Contract, whichever is earlier.

During construction, the Construction Manager shall collect monthly updated schedules from the Contractor as required under the Contract Documents. Construction Manager shall review the original and updated schedules for the Contractor's compliance with the scheduling requirements in the Contract Documents, and shall then, within two weeks of receiving the schedule from the Contractor, provide the schedule and comments regarding such compliance to the District and the Architect.

If the Contractor does not submit original or updated schedules as required under the Contract Documents, then the Construction Manager shall promptly inform the Contractor and demand the schedule.

If the Contractor's work does not progress according to the schedule or does not progress in a manner that will allow the Contractor to meet the completion deadline in the Contract Documents, then Construction Manager shall immediately demand a recovery plan from the Contractor as required in the Contract Documents. Upon receipt, Construction Manager shall

distribute the recovery plan, with the Construction Manager's recommendations in writing, to the District for its consideration.

5. Trivial Variations in the Work. The Construction Manager may authorize trivial variations in the work from the requirements of the Contract Documents that (a) do not involve an adjustment in the Contract price or the Contract time, and (b) are consistent with the overall intent of the Contract Documents. The Construction Manager shall immediately provide to the Architect and the District copies of such authorizations.

6. Quality Review and Inspections. The Construction Manager shall establish and implement a comprehensive program to monitor the quality of the construction, as part of the Construction Manager's supervision of the Contractor and its work. The purpose of the program shall be to assist in guarding the District against work by a Contractor that does not conform to the requirements of the Contract Documents. The Construction Manager shall supervise the Inspector of Record to ensure that he/she is performing all necessary inspections, and shall incorporate the results of the Inspector of Record's inspections into the Construction Manager's inspection and quality program.

When it is the opinion of the Construction Manager, Inspector of Record, District, or the Architect that the Contractor's means, methods, techniques, sequences or procedures of construction will likely lead to a portion of the Contractor's work not conforming to the Contract Documents, then the Construction Manager shall immediately so notify the Contractor in writing. The notice shall also state that the District will reserve all rights to demand correction of any resulting non-conforming work or to pursue other relief; however, the notice shall not direct Contractor as to what means, methods, techniques, sequences or procedures Contractor should use to meet the requirements of the Contract Documents, nor shall Construction Manager ever provide such direction to the Contractor during the Project. Except for trivial variations in the work from the requirements of the Contract Documents that do not involve an adjustment in the Contract price or the Contract time and which are consistent with the overall intent of the Contract Documents, the Construction Manager is not authorized to, and shall not, change, revoke, alter, enlarge, relax or release any requirements of the Contract Documents or approve or accept any portion of the work not conforming to the requirements of the Contract Documents. Communication between the Construction Manager and the Contractor with regard to quality review shall not in any way be construed as binding the Construction Manager, the Architect, or the District to the Contractor, or be construed as releasing the Contractor from performing the work in accordance with the Contract Documents. The Construction Manager will not be responsible for the means, methods, techniques, sequences and procedures of construction a Contractor uses for the Project unless, contrary to the terms of this Agreement, it directs the Contractor to use certain means, methods, techniques, sequences or procedures to meet the requirements of the Contract Documents. The Construction Manager shall use all available means and undertake good-faith efforts to secure the performance of the Contractor in accordance with the Contract Documents.

7. DSA Construction Oversight Process. The Construction Manager has the primary responsibility for the Project to supervise, coordinate and manage the compliance

of all parties, including the District's Inspector of Record/Project Inspector ("IOR"), Contractor, Architect, laboratories, District and the Construction Manager itself, with the DSA Construction Oversight Process.

The Construction Manager must communicate and coordinate with the Owner, Contractor, Architect, laboratories, and the IOR to meet the DSA Construction Oversight Process requirements without delay or added costs to the Project.

The Construction Manager shall be responsible for any additional DSA fees and delay damages related to review of proposed changes to the DSA-approved Contract Documents, to the extent Construction Manager's performance of, or failure to perform, any duties under this Agreement or law caused the additional DSA fees, and delay damages.

8. Change Orders and Claims. The Construction Manager shall recommend necessary or desirable changes to the Architect and the District, review proposed change orders, assist in negotiating Contractor's proposed change orders, submit recommendations to the Architect and District regarding the proposed change orders, and, if they are accepted, prepare change orders for the Architect's review and with the understanding that the District's governing body must approve all change orders. The Construction Manager shall review the contents of all proposed change orders from the Contractor regarding the Contract time or price, endeavor to determine the cause of the proposed change order, assemble information concerning the proposed change order, and evaluate the merits of the proposed change order. The Construction Manager shall ensure that all supporting documentation is submitted with any proposed change order, and shall request additional supporting documentation if necessary. The Construction Manager shall provide to the Architect a copy of each proposed change order, and the Construction Manager shall, in its evaluation of the Contractor's proposed change orders, consider the Architect's comments regarding the proposed changes. The Construction Manager shall make a final written recommendation to District and Architect regarding each proposed change order and shall conduct negotiations with the Contractor if necessary. No change orders will be paid by District without prior approval of the District. The Construction Manager shall prepare and distribute change order reports on a weekly basis for the District. The report shall list all District-approved change orders by number, a brief description of the change order work, the cost, and percent of completion of the change order work. The report shall also include similar information for proposed change orders and potential change orders of which the Construction Manager may be aware. To the extent that the Contractor performs work that is the subject of a proposed change order, the Construction Manager shall monitor the work and include in the daily report all information necessary to calculate the Contractor's costs in performing the work.

If the Contractor submits a claim to the District under its Contract, including one based on the denial of a proposed change order, the Construction Manager shall process and evaluate the claim, and make reasonable efforts to resolve the claim, under the procedures outlined in the Contract Documents.

9. Progress Payments and Retention Release. Progress payments shall be made as required by the Contract Documents and by law (including but not limited to Public

Contract Code section 20104.50), and the Construction Manager shall process all such payments and notify the District when payments are required. The Construction Manager shall develop and implement procedures for the review and processing of monthly applications by Contractor for progress payments and final payments. At or before submission of the Contractor's first progress payment application, the Construction Manager shall collect from the Contractor a reasonable schedule of values that accurately allocates the Contract price to the Contract work items. The Construction Manager shall receive, review, revise and give initial approval to the progress payment applications. After Construction Manager gives initial approval to the progress payment applications, it shall distribute them to Architect, and then to the District, for approval. The applications shall state the total Contract price, total payment to date, total retention to date, current payment requested based on percentages of work items completed to date (per the schedule of values), revised total payment, and revised retention. A portion of this application shall be a recommendation for payment that the Construction Manager shall sign, and deliver to, the District for the District's use in making payments to the Contractor.

Retention shall be released as required by the Contract Documents and by law (including but not limited to Public Contract Code section 7107), and the Construction Manager shall process the release and notify District of when such release is required.

The Construction Manager shall monitor the District's grounds for withholding some or all of the progress payments and/or retention release from the Contractor (including past and future liquidated damages, and cost of corrective work), and shall advise the District of such grounds before any progress payment or retention release. The Construction Manager shall withhold from progress payments and/or retention release for all such grounds unless the District instructs the Construction Manager to not withhold. The Construction Manager shall not waive any rights, claims or damages that the District may have against the Contractor without written authority from the District to do so. The Construction Manager shall take all action necessary to protect, document and preserve the District's rights, claims and damages against the Contractor, including but not limited to notification of the accrual or assessment of liquidated damages.

The Construction Manager, in conjunction with the District, shall establish and administer an appropriate Project accounting system and shall maintain cost accounting records on authorized work performed under unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records. Construction Manager shall provide monthly accounting updates.

10. Contractor Safety Programs. The Construction Manager shall review the safety programs the Contractor develops under the Contract Documents and shall coordinate all safety programs for the Project.

11. Permits and Approvals. The Construction Manager shall assist the District in obtaining approval and permits from all authorities having jurisdiction over the Project. The Construction Manager shall also verify that all required permits, bonds, and insurance have been obtained from the Contractor.

12. Coordination of Technical Inspection and Testing. The Construction Manager shall assist the District in selecting and retaining the professional services of special consultants and testing laboratories and coordinate their services. The Construction Manager shall receive a copy of all inspection and testing reports and shall provide a copy of such reports to the Architect. The Construction Manager shall coordinate with the District's testing consultants all testing required by the Architect, District or third parties.

13. Interpretation of Contract Documents. The Construction Manager shall consult with the Architect and the District if the Contractor submits a request for information or other requests for interpretation of the meaning or intent of the Contract Documents ("RFI"), and shall assist in the resolution of questions which may arise; however, the Architect shall have primary responsibility for the interpretation of Project plans and specifications. Within two (2) business days of receipt of an RFI, the Construction Manager shall either: 1) forward the RFI to the Architect and District; or 2) for an RFI not related to the plans and specifications, review or reject it. However, if the issue in the RFI is directly impacting the critical path at that time, the Construction Manager shall forward, review or reject the RFI immediately upon receipt. Responses received from the Architect shall be immediately forwarded to the submitting Contractor. Construction Manager shall keep Architect informed of any rejected RFI's.

14. Document and Submittal Review Procedures. The Construction Manager shall review all shop drawings, schedule updates, product data, samples, and other submittals provided by the Contractor and coordinate submittals with the information contained in the plans and specifications. The Construction Manager shall transmit all such materials to the Architect for approval within two business days of receipt, unless the submittal is directly impacting the critical path at that time, in which case the Construction Manager shall forward the submittal immediately upon receipt. The Construction Manager shall maintain logs, files and other necessary documentation. Responses received from the Architect shall be immediately forwarded to the Contractor that provided the submittal.

15. Daily Log. The Construction Manager shall record the progress of the Project by a daily log. The Construction Manager shall submit written reports to the District and the Architect on a regular basis, as established by the District. The daily log will include, but not be limited to, information about the weather, Contractor and subcontractors at work and their equipment and staffing, work accomplished, problems encountered, rejection of material or work, the current critical path of the Project, issues that are known to be in dispute and/or may be the subject of proposed change orders or claims, and other similar relevant data as the District may require. Construction Manager shall document the Project by use of video, photographs, and audio, with particular attention to known disputes and/or issues that could lead to proposed change orders or claims.

16. Project Site Records. The Construction Manager shall maintain at the Project site, on a current basis the following documents: A record copy of the Contract, drawings, specifications, addenda, change orders, and other modifications, in good order and marked to record all changes made during construction; pre-construction activities documents,

including but not limited to constructability review documents (see Section 2.B., above); shop drawings, product data, samples, and submittals; records regarding purchases, materials and equipment; applicable handbooks, schedules, schedule updates and daily logs; records regarding progress payments, retention, proposed change orders, claims and change orders; maintenance and operating manuals and instructions; and other related documents and revisions which arise out of the Contract or work. The Construction Manager shall make all records available to the District and Architect and deliver them to the District at Project completion or termination of this Agreement.

17. Security. The Construction Manager shall arrange for storage, protection, and security of District-furnished materials, systems, and equipment until such items are incorporated into the Project. Upon District's request, Construction Manager shall comply with any fingerprinting or related requirement.

18. Start-Up Operations. The Construction Manager shall review the Contractor's checkout of the readiness of utilities, operational systems, and equipment and shall assist the Contractor in its initial start-up, testing, balancing, adjusting, training of District employees and preparation of operations and maintenance manuals. The Construction Manager shall coordinate and assist the District in the move-in for the Project.

19. Punchlist. Upon notice from the Contractor that the Contractor believes its work is complete, the Construction Manager, in consultation with the Architect and the Inspector of Record, shall prepare a list of incomplete work or work which must be corrected due to failure to conform to the requirements of the Contract Documents (the "Punchlist"). The Construction Manager shall diligently pursue the Contractor to complete its Punchlist work as quickly as possible, using all available District powers and rights under the Contract Documents. If the Contractor's Punchlist is not completed within forty-five (45) days of issuance, the Construction Manager shall provide a written recommendation to the District as to how to best proceed to secure completion of the Punchlist as quickly as possible.

20. Final Completion and Final Payment. The Construction Manager shall consult with the Architect and the District and shall determine when the Contractor's work is fully complete as required by the Contract Documents. When the Contractor's work is complete, the Construction Manager shall notify the District in writing and shall recommend that the District accept the Contract work as fully complete. The Construction Manager shall draft the resolution of acceptance for the District's Board to approve, and shall also, if required for the Project or if District requests it, draft a Notice of Completion to be recorded with the County within fifteen (15) days after the Board's acceptance. The Construction Manager shall continue to process progress payment applications, releases of retention, proposed change orders and claims as required by the Contract Documents and the law beyond the completion and acceptance of the work.

21. Final Documents. During the Project, the Construction Manager shall secure from the Contractor and transmit to the District all documents and items required by the Contract Documents, including guarantees, affidavits, releases, bonds, keys, schedule updates, manuals, record drawings, and daily logs. Upon completion of the Project, the Construction

Manager shall also forward all of its documents and plans to the District and ensure all such plans and documents are well organized for any appropriate audit or review of the Project. The Construction Manager shall collect as-built drawings from the Contractor and review them for accuracy and completeness, and then forward them to Architect for preparation of a final complete set of as-built drawings for the Project in its entirety. The Construction Manager, in cooperation with the District and Architect, shall assist with the coordination and processing of all necessary paperwork and closeout documents with the Office of Public School Construction (“OPSC”), DSA, and any other applicable public agencies.

22. Warranty Inspections. The Construction Manager shall perform warranty inspections 30 to 60 days prior to expiration of each warranty period applicable to the Contractor’s work, and shall arrange for, and monitor, Contractor’s work on site and inspect any resulting warranty work by the Contractor. Immediately after a warranty inspection, the Construction Manager shall notify the Contractor in writing of all warranty items that require correction.

4. DISTRICT DUTIES AND RESPONSIBILITIES. During the term of this Agreement, the District shall:

A. Provide a budget for the Project (“District’s budget”), based on consultation with the Construction Manager and the Architect;

B. Designate a representative authorized to act on the District's behalf with respect to the Project. The District, or such authorized representative, shall examine documents submitted by the Construction Manager and shall render decisions promptly to avoid unreasonable delay in the progress of the Project;

C. Furnish structural, mechanical, electrical, and other laboratory tests, inspections and reports as required by law or by the Contract Documents;

D. Retain an architect to design the Project;

E. Furnish a list of events for inclusion in the schedule(s) that may affect construction, such as quiet days, fundraising events, meetings, parent nights, or summer school; and

F. Advise promptly of any fault or defect in the Project, or nonconformance with the Contract Documents, that the District observes.

5. TERMINATION.

A. District may terminate this Agreement for any reason, in its absolute discretion and convenience, by giving Construction Manager fourteen (14) days written notice of termination. District may also issue a written notice of termination of this Agreement for cause based on the Construction Manager’s breach of this Agreement if (i) District mails and faxes to

Construction Manager a written notice of intent to terminate with explanation of the breaches and the cure necessary, and (ii) Construction Manager does not cure, or offer a reasonable plan to cure, the default within five (5) calendar days of issuance of the written notice of intent to terminate.

B. In the event of termination by District, the Construction Manager shall be compensated pursuant to Section 2, above, for all services satisfactorily performed through the termination date.

6. HOLD HARMLESS/INDEMNIFICATION. Construction Manager shall indemnify, defend and hold harmless the District, its Board of Trustees, officers, agents, and employees from any and all claims, damages, losses, liability, causes of action and demands, including reasonable attorney's fees and costs, incurred in connection with or in any manner arising out of Construction Manager's performance of, or failure to perform, any duties under this Agreement or the law, including but not limited to breaches of the applicable standard of care.

7. STATUS OF CONSTRUCTION MANAGER AND RELATIONSHIP TO DISTRICT. The Construction Manager shall be District's principal agent in providing the construction management services described in this Agreement. In providing the construction management services contemplated by this Agreement, the Construction Manager shall, on behalf of the District, maintain a professional working relationship with the District, the Contractor, the Architect and all others. The Construction Manager's primary obligation of loyalty is to the District, not the Architect, the Contractor, a subconsultant, or another party. When performing its duties and responsibilities on the Project, the Construction Manager must act and make recommendations in accordance with the District's best interests, and not the Construction Manager's, Architect's, the Contractor's, or another party's best interests. This duty of loyalty to the District requires the Construction Manager to, among other things, notify the District of any potential deficiencies in Architect's design of the Project or potential breaches by Architect of its obligations to the District under law (including the standard of care) or the agreement between the District and Architect. This duty of loyalty to District also requires the Construction Manager to, among other things, notify District of any potential deficiencies in the Contractor's work or potential breaches by the Contractor of its obligations to the District under law or under the agreement between the District and the Contractor.

As Construction Manager, the Construction Manager is not an employee of the District. Construction Manager is understood to be an independent contractor. Nothing in this Agreement shall preclude Construction Manager from performing similar services for other persons or entities.

Nothing contained in this Agreement shall be deemed to create any contractual relationship between the Construction Manager and the Architect, the Contractor, or a material supplier for the Project, nor shall anything contained in this Agreement be deemed to give any third party any claim or right of action against the District, the Architect or the Construction Manager which does not otherwise exist.

8. INSURANCE. The Construction Manager shall purchase and maintain insurance that will protect the Construction Manager from the claims set forth below that may arise out of or

result from the Construction Manager's performance of services or failure to perform services required by this Agreement:

A. Claims under Workers' Compensation, disability benefits and other similar employee benefits acts that are applicable to the work performed;

B. Claims for damages because of bodily injury, occupational sickness or disease or death of Construction Manager's employees, agents or invitees;

C. Claims for damages because of bodily injury or death of any person;

D. Claims for damages insured by usual personal injury liability coverage that are sustained (1) by any person as a result of an offense directly related to the employment of such person by the Construction Manager or (2) by any other person;

E. Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use therefrom; or

F. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

The Construction Manager's comprehensive general and automobile liability insurance shall be written for not less than the following limits of liability:

Comprehensive General Liability

Personal Injury:

\$1,000,000 Each Occurrence

\$2,000,000 Aggregate

Property Damage:

\$1,000,000 Each Occurrence

\$2,000,000 Aggregate

Comprehensive Automobile Liability

Bodily Injury:

\$1,000,000 Each Person

\$1,000,000 Each Occurrence

Property Damage:

\$1,000,000 Each Occurrence

Errors and Omissions Insurance – Prior to commencement of services under this Agreement, Construction Manager shall furnish to the District satisfactory proof that the Construction Manager has, for the period covered by this Agreement, errors and omissions insurance on claims basis with limits of at least \$2,000,000.

Each policy of insurance above shall operate as primary insurance. The District, its Board of Trustees, employees and agents shall be named as additional insureds under the policies. A copy of the policies shall be provided before any work is commenced under this Agreement. Policies shall not be canceled or reduced in coverage without 30 days prior written notice to District.

9. LICENSING REQUIREMENTS AND QUALIFICATIONS. Construction Manager represents and warrants that Construction Manager possesses the appropriate qualifications and licenses required by all applicable provisions of law, including Government Code sections 4525, et seq.; that Construction Manager is competent and qualified to perform the services required by this Agreement; that Construction Manager has substantial expertise and experience in all aspects of construction management for projects of this type, including but not limited to construction supervision, bid evaluation, cost benefit analysis, claims review and negotiation, general management and administration of construction projects, furthering of District's interests in the management and construction of the Project; and that Construction Manager shall perform in an expeditious and economical manner consistent with the interests of the District.

10. PAYROLL AND WORKER'S COMPENSATION RESPONSIBILITIES. Construction Manager will be liable and solely responsible for paying all required taxes and workers' compensation and other obligations, including, but not limited to, federal and state income taxes and social security taxes. Construction Manager agrees to indemnify, defend and hold the District harmless from any liability which Construction Manager may incur to the Federal or State governments as a consequence of this Agreement. All payments to the Construction Manager shall be reported to the Internal Revenue Service.

11. SUCCESSORS AND ASSIGNS. The District and the Construction Manager, respectively, bind themselves, their successors, assigns, and representatives to the other party to this Agreement, and to the partners, successors, assigns, and legal representatives of such other party with respect to all terms of this Agreement. Neither District nor the Construction Manager shall assign or transfer any interest in this Agreement without the written consent of the other.

12. SEVERABILITY. If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

13. AMENDMENTS. This Agreement cannot be changed or supplemented orally and may be modified or superseded only by written instrument executed by all parties.

14. EXECUTION BY FACSIMILE OR IN COUNTERPARTS; WARRANTY OF AUTHORITY. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement. By execution of this Agreement, each person signing on behalf of an entity warrants that this Agreement is executed on behalf of a valid legal entity; that such entity possesses the full right and authority to undertake any action this Agreement contemplates; that the execution of this Agreement by the signatory for a Party has

been duly and properly authorized by such entity on whose behalf said Agreement is executed, in accordance with all applicable laws, regulations, agreements and procedures governing the authority of such person to execute this Agreement on behalf of such entity; and that the consent of all persons or entities whatsoever necessary to the Parties due execution of this Agreement has been obtained. This Agreement shall be binding on the Parties when all of the Parties have fully executed this Agreement (where each of the parties has signed at least one counterpart). The Parties agree that the District will not have fully executed this Agreement until the District's governing body has approved or ratified the Agreement and the designated District official has signed it.

15. INTERPRETATION. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party.

16. NOTICES. All payments and any notices or communications under this Agreement shall be in writing and shall be deemed to be duly given if served personally on the party to whom it is directed or shall be deemed served forty-eight (48) hours after the same has been deposited in the United States Mail, certified or registered mail, return receipt requested, or overnight mail, postage prepaid, and addressed in the case of:

Construction Manager:	Cumming Management Group, Inc.
Name:	John Olsson
Title:	PE, CCM, LEED, AP
Address:	111 Broadway, Ste. 300 Oakland, CA 94607
District:	Oakland Unified School District
Name:	Tadashi Nakadegawa
Title:	Deputy Chief
Address:	955 High Street Oakland, CA 94601

17. GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the State of California, excluding its choice of law rules. Any action or proceeding seeking any relief under, or with respect to, this Agreement shall be brought solely in the Superior Court of the State of California for the County in which the District maintains its District office, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

18. WORK RECORDS. All documents, daily logs, and any other written work product generated by Construction Manager shall be deemed to the sole and exclusive property of District.

19. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either

EXHIBIT A

HOURLY RATE SCHEDULE



Section 4 Cost and Fee Summary; Form of Agreement

The Construction Manager will be paid on an hourly basis for its services, so provide a schedule of hourly rates for all staff that may perform services. The form of agreement to be signed by the selected Construction Manager is attached to this RFQ/P as Attachment A, and all proposed hourly rates shall be based on the services required by, and terms of, this form of agreement. The form of agreement is not negotiable.

Cost and Fee Summary

Cumming's fee philosophy for professional services is based on our understanding of the District's need for seasoned and qualified professionals at a sensible cost. We operate as an extension of the District's staff to ensure full transparency, collaboration, and that our team members offer the highest level of expertise to successfully accomplish any District task.

Fee Structure

It is customary for Cumming to provide our clients with the hourly rates for key personnel classifications anticipated to be needed to perform the scope of services and to always secure client approval prior to initiating any new work that would require additional resources. Cumming's standard billing practice is based on time and materials, in which invoices are submitted monthly for hours expended on work performed the month prior. Utilizing this philosophy, we have found that Cumming's fee approach traditionally provides our clients with the most flexibility and cost effectiveness, as costs are only incurred based on the current needs of the owner.

Hourly Rates

Cumming has provided hourly rates below to provide Construction Management Services. We acknowledge that staffing will be determined based on the District's needs. Cumming's fees are typically determined by our recommended staffing plan, projected level of effort, and proposed hourly rates, which are subject to approval by the District.

HOURLY RATE SCHEDULE		
CLASSIFICATION	TEAM MEMBER	HOURLY RATE
Partner-in-Charge / Principal Project Executive	John Olsson	\$195
Project Director / Senior Construction Manager	Elena Comrie	\$175
Senior Construction Manager	Teri Mathers	\$167.50
Senior Cost Estimator	Vaughn Clark	\$185
Construction Manager	Babatunde Olayomi	\$160
Construction Manager	Alton Jefferson	\$160
Construction Manager	Josef Corbin	\$160
Construction Manager	Greg Santiago	\$160
Constructability Review Manager	Michael Echelmeier	\$170*
		*Constructability reviews have been priced on a lump sum basis previously with OUSD.
Cost Estimating Manager	Nick Mata	\$195
Senior Scheduler	Dwaipayyan Das	\$185
Scheduling Manager	Albert Lee	\$165
Project Controls Manager	Hunter Tasseff	\$145
Senior Quality Control Manager	Fred MacKay	\$165
Quality Control Manager	Christopher Wade	\$165
Safety Manager	Carl Bold	\$145
Senior Project Engineer	Niwonna Jones	\$145



HOURLY RATE SCHEDULE		
Project Engineer	Satvaran "Seth" Sidhu	\$125
Project Engineer	Hakeem Mahdi	\$125
Intern	Ron Anderson	\$75
Administrator	Sara Stroud	\$85

Reimbursables

Any reimbursable expenses incurred during Cumming's performance of services, including, without limitation, all costs for personnel, travel within twenty-five (25) miles of the District's geographic limits, per diem expenses, printing and/or shipping of deliverables will be billed at actual costs with 0% mark-up.

On-site facilities are generally provided by the District or part of the contractor's general conditions. If requested, these costs would fall under the reimbursable expenses category and shall be billed at cost with 0% markup. Client shall reimburse for any out-of-pocket expenses incurred which are authorized in advance and in writing.

As part of this section, provide a description of your team's approach to meet the Board Policy requirements for small, local businesses participation, including the any teaming with other firms, and your team's commitment to meeting this policy.

Subconsultants

Cumming is proud to partner with Local, Small Local Resident Business Enterprises (L/SL/SLRBE), qualified firms within the industry that have extensive experience performing the scope of services outlined in the RFQ and a strong track record in the successful delivery of multi million-dollar projects for K-12 clients. We have provided introductions to our subconsultant partners below.

Hattin Construction Management (HCM)

Hattin Construction Management, Inc. (HCM) is a minority-owned construction management firm specializing in project management, cost estimating and scheduling. The firm was founded in May 2012 by Roosevelt Hattin, a registered Professional Engineer and Certified Construction Manager by Construction Manager Certification Institute-CMAA. HCM's senior staff bring over 30 years of construction industry experience. HCM is headquartered in Oakland, CA with locations in Cherry Hill, NJ, and Washington, DC.

HCM's team is comprised of qualified professional Project/Construction Managers, Cost Estimators, Schedulers, and Project Support Staff all with educational facilities experience and expertise. Our CM experience includes Oakland USD, West Contra Costa USD, Berkeley USD, San Francisco USD, and San Ramon Valley USD.

Quality Construction Control (QCC)

Quality Control Construction (QCC) was established 7 years ago in an effort to provide cost-effective yet reliable quality assurance services to clients. With over 20 years of construction and safety experience, our organization possess the expertise to help deliver a quality product. QCC provides services at the design, build and pre-inspection phases of construction projects for Fire-Stop Systems, Structural Framing, Elevator Commissioning and MEP Commissioning in accordance with the CBSC, ASME, Title 24 and UL requirements. Our clients include UCSF, Oakland Unified School District, Alameda County Health System and the Office of Statewide Health Planning and Development.

Jtec

Since 2000, Jtec HCM has provided comprehensive project management and construction management services on both traditional design-bid-build as well as design/build projects for educational facilities, commercial buildings, healthcare centers and clinics, and municipal projects. We have offices in Oakland, Sacramento and Loma Linda, California and are registered with the State of California to conduct business. The firm is also registered as a Small Local Business Enterprise (SLBE) through the City of Oakland.

EXHIBIT B

BOND PROJECTS

Reflected in Approved Bond Measure

PLEASE NOTE: *The cost estimates associated with each project are NOT a legal commitment to fund those projects at those levels and the cost estimates are NOT included in the now-approved Bond Measure. Moreover, the cost estimates are just estimates, primarily based on information in the Facilities Master Plan; the actual cost of each project is almost certainly going to be different. The inclusion of the cost estimates in this document (and in the original version that was presented to the School Board as Attachment B) was to ensure that the projects identified in the Bond would likely be able to be funded by the \$735 million generated by the now-approved Bond Measure.*

<u>Site</u>	<u>Proposed Project Scope</u>	<u>Est. Cost (in millions)</u>	<u>Location in Bond Proj. List</u>
Coliseum College Prep Academy (1390 66th Avenue)	› Site expansion › Additional classrooms	\$35.5	Site-Specific Projects
Claremont Middle School (5750 College Avenue)	› New kitchen › New cafeteria	\$18.0	Site-Specific Projects
Elmhurst United Middle School (1800 98th Avenue)	› Site modernization	\$10.0	Site-Specific Projects
Garfield Elementary School (1640 22nd Avenue)	› Site renovation or replacement (partial or total)	\$56.7	Site-Specific Projects
Hillcrest Elementary School (30 Marguerite Drive)	› New kitchen	\$1.7	Site-Specific Projects
Laurel Child Development Center (3825 California Street)	› Site renovation or replacement (partial or total)	\$11.5	Site-Specific Projects
Marcus Foster Educational Leadership Center (1025 2nd Avenue)	› Site plan › Site replacement › Facilities for alternative education and career technical education programming › Community service facilities › Central administration facilities, including but not limited to student and family facing services	\$15.0	Site-Specific Projects
McClymonds High School (2607 Myrtle Street)	› Site renovation or replacement (partial or total) › Site expansion to accommodate additional grade levels	\$65.0	Site-Specific Projects
Melrose Leadership Academy/ Maxwell Park	› Site renovation (partial or total) › Site expansion/school	\$49.5	Site-Specific Projects

Elementary School (5328 Brann Street and 4730 Fleming Avenue)	consolidation at 4730 Fleming Avenue		
Piedmont Elementary School (4314 Piedmont Avenue)	› New kitchen	\$2.0	Site-Specific Projects
Roosevelt Middle School (1926 East 19th Street)	› Site renovation or replacement (partial or total)	\$70.6	Site-Specific Projects
Skyline High School (12250 Skyline Blvd)	› ADA compliance › Bathrooms › Remove, replace, or acquire portables › Seismic"	\$10.0	Site-Specific Projects
Administration and Governance Center	› Administration building(s)	\$50.0	District-Wide Projects
Projects to Increase Access/ Improve Quality	› Support school expansions/consolidations	\$10.0	District-Wide Projects
Districtwide Initiatives	› Possible facilities improvements at all sites, COVID-related facilities improvements, distance learning devices and infrastructure	\$200.2	District-Wide Projects
Bond Program Management	› Project managers, construction managers, accountants to oversee projects from conception to completion, etc.	\$56.0	Miscellaneous
Contingency	› 10% contingency for unexpected costs	\$73.5	Throughout
TOTAL		\$735.0	

DESCRIPTIONS (Continued from Page 1)

the attached endorsement CNA75079XX (1-15). Waiver of Subrogation applies on General Liability, per the attached endorsement CNA74879XX (1-15); Auto Liability, per the attached endorsement CA 04 44 10 13; Umbrella Liability per the attached endorsement CNA75504XX (03-2015); and Workers Compensation, per the attached endorsement G-19160-B. 30 days Notice of Cancellation for non-payment of premium applies per the attached endorsement CNA75014XX (01-2015). There are no exclusions for Sexual Abuse and Molestation.



DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

Project Information

Project Name	Facilities Planning & Management Project	Site	918
Basic Directions			
Services cannot be provided until the contract is awarded by the Board <u>or</u> is entered by the Superintendent pursuant to authority delegated by the Board.			
Attachment Checklist	<input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider		

Contractor Information

Contractor Name	Cumming Management Group, Inc.	Agency's Contact	John Olsson
OUSD Vendor ID #	001259	Title	Owner
Street Address	1111 Broadway, Ste. 300	City	Oakland
Telephone	408-769-6942	State	CA
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Zip	94607
OUSD Project #	00918	Policy Expires	
		Worked as an OUSD employee?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Term of Original/Amended Contract

Date Work Will Begin (i.e., effective date of contract)	8-26-2021	Date Work Will End By (not more than 5 years from start date, for construction contracts, enter planned completion date)	6-30-2026
		New Date of Contract End (If Any)	

Compensation/Revised Compensation

If New Contract, Total Contract Price (Lump Sum)	\$	If New Contract, Total Contract Price (Not To Exceed)	\$900,000.00
Pay Rate Per Hour (if Hourly)	\$	If Amendment, Change in Price	\$
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	Org Key	Object Code	Amount
9650/0000	Fund 21/Measure J	210-9650-0-000-8500-6289-918-9180-9905-9999-99999	6289	\$900,000.00

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.	Acting Director, Facilities Planning and Management				
	Signature <i>K Chatman</i>	Date Approved	7/21/21		
2.	General Counsel, Department of Facilities Planning and Management				
	Signature <i>Lozano Smith</i>	Date Approved	7/15/21		
3.	Deputy Chief, Facilities Planning and Management				
	Signature <i>[Signature]</i>	Date Approved	7/21/21		
4.	Chief Financial Officer				
	Signature	Date Approved			
5.	President, Board of Education				
	Signature	Date Approved			