

Board Office Use: <b>Legislative File Info.</b>	
File ID Number	23-1739
Introduction Date	9-13-2023
Enactment Number	23-1611
Enactment Date	9/13/2023 er



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

## Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Preston Thomas, Chief Systems & Services Officer, Facilities Planning and Management

**Board Meeting Date** September 13, 2023

**Subject** Amendment No. 2 Construction Management Agreement – Cumming Management Group, Inc. - Facilities Planning and Management Project – Division of Facilities Planning and Management

**Action Requested** Approval by the Board of Education of Amendment No. 2 Construction Management Agreement by and between the **District and Cumming Management Group, Inc.**, Oakland, California, for the latter to provide continued construction management services and submitting updated hourly rates for the 2023-2024 calendar year for the **Facilities Planning and Management Project**, in an additional total amount of **\$2,733,986.00**, increasing Agreement’s total not-to-exceed amount from **\$3,350,840.00** to **\$6,084,826.00**, and authorizing the President and Secretary of the Board to sign the Amendment for same with said Consultant.

**Discussion** This Amendment is for continued Measure Y construction management services and updated hourly rates for the 2023-2024 calendar year.

**LBP** (Local Business Participation Percentage) 50.002%

**Recommendation** Approval by the Board of Education of Amendment No. 2 Construction Management Agreement by and between the District and Cumming Management Group, Inc., Oakland, California, for the latter to provide continued construction management services and submitting updated hourly rates for the 2023-2024 calendar year for the Facilities Planning and Management Project, in an additional total amount of \$2,733,986.00, increasing Agreement’s total not-to-exceed amount from \$3,350,840.00 to \$6,084,826.00, and authorizing the President and Secretary of the Board to sign the Amendment for same with said Consultant.

**Fiscal Impact** Fund 21, Building Funds, Measure Y

**Attachments**

- Amendment No. 2, including Exhibits
- Certificate of Insurance
- Routing Form
- File ID’s 22-1579 & 21-1455



## AMENDMENT NO. 2

### CONSTRUCTION MANAGEMENT AGREEMENT

This Amendment is entered into between the Oakland Unified School District (OUSD) and **Cumming Management Group, Inc.** OUSD entered into an agreement with CONTRACTOR for services on **August 26, 2021** ("Agreement"), and the parties agree to amend the Agreement for the Services with **Facilities Planning & Management Construction Management Project** as follows and as set forth in Exhibit A:

1.	<b>Services:</b>	<input checked="" type="checkbox"/> The scope of work is <u>unchanged</u> .	<input type="checkbox"/> The scope of work has <u>changed</u> .
<p><b>If scope of work changed:</b> Provide brief description of revised scope of work including description of expected final results, such as services, materials, products, and/or reports; attach additional pages as necessary.</p> <p><b>The CONTRACTOR agrees to provide the following amended services:</b> To continue construction management services and submitting updated hourly rates for the 2023-2024 calendar year, as described in the Proposal dated, May 30, 2023, attached to this Amendment as Exhibit A.</p>			
2.	<b>Terms (duration):</b>	<input checked="" type="checkbox"/> The term of the contract is <u>unchanged</u> .	<input type="checkbox"/> The term of the contract has <u>changed</u> .
<p><b>If term is changed:</b> The contract term is extended by an additional _____, and the amended expiration date is _____.</p>			
3.	<b>Compensation:</b>	<input type="checkbox"/> The contract price is <u>unchanged</u> .	<input checked="" type="checkbox"/> The contract price has <u>changed</u> .
<p><b>If the compensation is changed:</b> The not to exceed contract price is</p> <p style="text-align: center;"><b><u>X Increased by: Two Million, Seven Hundred Thirty-three Thousand, Nine Hundred Eighty-six dollars No/100 (\$2,733,986.00).</u></b></p> <p><input type="checkbox"/> Decreased by _____ dollars and no/100 (\$_____).</p> <p>Prior to this amendment, the not to exceed total contract price was <b><u>Three Million Three Hundred Fifty Thousand Eight Hundred Forty Dollars No/100 (\$3,350,840.00)</u></b>, and after this amendment, the not to exceed total contract price will be: <b><u>Six Million, Eighty-Four Thousand, Eight Hundred Twenty-Six dollars No/100 (\$6,084,826.00).</u></b></p>			

4. **Remaining Provisions:** All other provisions of the Agreement, and prior Amendment(s) if any, shall remain unchanged and in full force and effect as originally stated.


5. **Amendment History:**

There are no previous amendments to this Agreement.  This contract has previously been amended as follows:

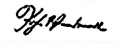
No.	Date	General Description of Reason for Amendment	Amount of Increase (Decrease)
01	6-29-2022	Compensation	\$2,450,840.00

6. **Approval:** This Amendment is not effective, and no payment shall be made to Contractor based on this Amendment, until it is signed by Contractor and approved by the Board of Education.

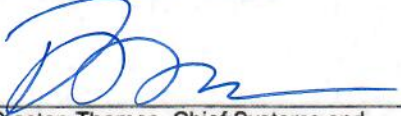
**OAKLAND UNIFIED SCHOOL DISTRICT**

  
\_\_\_\_\_  
Mike Hutchinson, President  
Board of Education

9/14/2023  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Kyla Johnson-Trammell, Superintendent  
Secretary, Board of Education

9/14/2023  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Preston Thomas, Chief Systems and  
Services Officer, Facilities Planning and Management

8/18/23  
\_\_\_\_\_  
Date

**Approval as to form:**

  
\_\_\_\_\_  
Arne Sandberg (name)  
General Counsel, Facilities, Planning and Management

8/17/23  
\_\_\_\_\_  
Date

**CONTRACTOR**

  
\_\_\_\_\_  
Contractor Signature

9.16.2023  
\_\_\_\_\_  
Date

JOHN CASSADY, VICE PRESIDENT  
\_\_\_\_\_  
Print Name, Title

**EXHIBIT "A"**  
**Scope of Work for Amendment**

**Contractor Name: Cumming Management Group, Inc.**

1. Detailed Description of Services to be provided: To continue construction management services and submitting updated hourly rates for the 2023-2024 calendar year, as described in the Proposal dated, May 30, 2023, attached to this Amendment as Exhibit A.

2. Specific Outcomes:

3. Alignment with District Strategic Plan: Indicate the goals and visions supported by the services of this contract:

<input type="checkbox"/> Ensure a high quality instructional core	<input type="checkbox"/> Prepare students for success in college and careers
<input type="checkbox"/> Develop social, emotional and physical health	<input checked="" type="checkbox"/> Safe, healthy and supportive schools
<input checked="" type="checkbox"/> Create equitable opportunities for learning	<input checked="" type="checkbox"/> Accountable for quality
<input type="checkbox"/> High quality and effective instruction	<input type="checkbox"/> Full service community district

May 30, 2023

Kenya Chatman  
Director of Facilities  
Oakland Unified School District  
955 High Street  
Oakland, CA 94601

RE: Construction Project Management Services July 2023 through June 2024

Dear Ms. Chatman:

Thank you for giving Cumming Management Group the opportunity to provide this Construction Project Management Services proposal to Oakland Unified School District (OUSD) for Construction Management Services for Measure Y projects for your next fiscal year period.

Included in this proposal:

- 1) Project Understanding
- 2) Project Management Scope of Services and Fee Proposal
- 3) Updated Hourly Rates and projected fee schedule

Please do not hesitate to contact me to discuss in further detail. We are confident that we will arrive at an arrangement that meets your needs.

Respectfully submitted,  
Cumming Construction Management, Inc.



John D. Olsson  
Vice President, LEED, CCM

Cc: Elena Comrie

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## **1. SECTION 1 - PROJECT UNDERSTANDING**

We understand the scope of the project includes the Construction Management of various Construction projects for the Oakland Unified School District as part of the Bond Measure Y program.

Our services start date will be July 1, 2023, and our services will continue through June 30, 2024.

## **2. SECTION 2 - SCOPE OF SERVICES and FEE**

### **PROJECT MANAGEMENT**

We propose to support OUSD in the Project Management of the project(s) by providing Elena Comrie as Senior Program Manager, project managers, Assistant project managers, project engineers and construction managers as requested and approved by the district.

We assume that OUSD will maintain the overall development budget with input and advice from our team as required. We will actively assist in managing to the established budget.

We propose to provide our services on a time-and-materials basis according to the Hourly Rate schedule described in this proposal, plus reimbursable expenses. We will invoice monthly in arrears based on actual time spent and will always strive to be as time and hence cost efficient as possible.

The attached PPME fee calculation spreadsheet represents our anticipated efforts, and we will not exceed the estimated total fee stated below without obtaining authorization from OUSD. We believe this will provide a level of flexibility to OUSD while ensuring the project receives the service level it needs, which based on our experience we know will fluctuate during the proposed period.

**Total GMP is: \$2,733,986**

The above is the amendmened fee. Should the project schedule be adjusted, whether extended or reduced, we will work with you to develop a revised arrangement and adjust our estimated efforts and fee to align.

### **LOCAL BUSINESS ENTERPRISE**

Quality Construction Controls (QCC) has joined our team. They are an Oakland based LBE that is familiar with OUSD. We are including our other LBE Hattin CM as well and expect to add to their team.

### **OTHER SERVICES**

Scheduling, estimating, risk management analysis, or additional project management can be provided with our in-house team members. If such a need arises, we will develop an arrangement that works for you and provide a separate proposal.

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## REIMBURSABLE EXPENSES

Any reimbursable expenses will be billed at cost.

We are excited to work with OUSD and look forward to the opportunity to add value to this exciting project.

Should this proposal be acceptable, please sign and return to us:

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

The accepted proposal will be made part of a Professional Services Agreement to be executed between OUSD and Cumming.

### 3. SECTION 3 – CUMMING UPDATED HOURLY RATES

#### Project Management

Vice President	\$275.00
Program Director	\$235.00
Senior Construction Manager	\$196.49
Construction and Project Managers	\$192.00
Assistant Project Managers	\$165.00
Project Engineers	\$138.90

See Attached PPME for estimated fee schedule.

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**PLANNED PROJECT MANAGEMENT EFFORT**

Project #: **Fremount UHSD - Proposal**  
 Project Name: **Bond Management**

Start: **7/1/2023**  
 End: **6/30/2024**

Team Member	Phase >>> TOTAL	Jul-23	Aug-23	Sep-23	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24	Apr-24	May-24	Jun-24	Jul-24
		<b>Project Staffing Hours</b>												
Principal In Charge - John Olsson	102	8	9	8	9	8	8	8	8	9	8	9	8	-
Project Director-CM team lead - Elena Comrie	2,048	168	184	168	176	168	168	168	160	176	168	176	168	-
Project Manager - Shivani More	2,048	168	184	168	176	168	168	168	160	176	168	176	168	-
Construction Manager LBE	1,880	-	184	168	176	168	168	168	160	176	168	176	168	-
Assistant Project Manager - QCC	1,964	84	184	168	176	168	168	168	160	176	168	176	168	-
Project Engineer - QCC	2,048	168	184	168	176	168	168	168	160	176	168	176	168	-
Senior Project or Construction Manager	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Project Engineer - Hattin	2,048	168	184	168	176	168	168	168	160	176	168	176	168	-
Project Engineer - CMG	2,048	168	184	168	176	168	168	168	160	176	168	176	168	-
Project Engineer - CMG	2,048	168	184	168	176	168	168	168	160	176	168	176	168	-
	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Hours</b>	<b>16,234</b>	<b>1,100</b>	<b>1,481</b>	<b>1,352</b>	<b>1,417</b>	<b>1,352</b>	<b>1,352</b>	<b>1,352</b>	<b>1,288</b>	<b>1,417</b>	<b>1,352</b>	<b>1,417</b>	<b>1,352</b>	<b>-</b>

<b>Total Staffing Fee</b>														
Principal In Charge - John Olsson	28,160	2,310	2,530	2,310	2,420	2,310	2,310	2,310	2,200	2,420	2,310	2,420	2,310	-
Project Director-CM team lead - Elena Comrie	481,280	39,480	43,240	39,480	41,360	39,480	39,480	39,480	37,600	41,360	39,480	41,360	39,480	-
Project Manager - Shivani More	393,216	32,256	35,328	32,256	33,792	32,256	32,256	32,256	30,720	33,792	32,256	33,792	32,256	-
Construction Manager LBE	369,401	-	36,154	33,010	34,582	33,010	33,010	33,010	31,438	34,582	33,010	34,582	33,010	-
Assistant Project Manager - QCC	324,060	13,860	30,360	27,720	29,040	27,720	27,720	27,720	26,400	29,040	27,720	29,040	27,720	-
Project Engineer - QCC	284,467	23,335	25,558	23,335	24,446	23,335	23,335	23,335	22,224	24,446	23,335	24,446	23,335	-
Senior Project or Construction Manager	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Project Engineer - Hattin	284,467	23,335	25,558	23,335	24,446	23,335	23,335	23,335	22,224	24,446	23,335	24,446	23,335	-
Project Engineer - CMG	284,467	23,335	25,558	23,335	24,446	23,335	23,335	23,335	22,224	24,446	23,335	24,446	23,335	-
Project Engineer - CMG	284,467	23,335	25,558	23,335	24,446	23,335	23,335	23,335	22,224	24,446	23,335	24,446	23,335	-
	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Fee</b>	<b>\$ 2,733,986</b>	<b>\$ 181,247</b>	<b>\$ 249,843</b>	<b>\$ 228,117</b>	<b>\$ 238,980</b>	<b>\$ 228,117</b>	<b>\$ 228,117</b>	<b>\$ 228,117</b>	<b>\$ 217,254</b>	<b>\$ 238,980</b>	<b>\$ 228,117</b>	<b>\$ 238,980</b>	<b>\$ 228,117</b>	<b>\$ -</b>

<b>Reimbursable &lt;&lt;Expenses or Consultants&gt;&gt;</b>														
Reimbursables	1,800	150	150	150	150	150	150	150	150	150	150	150	150	-
	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Reimbursable Expenses</b>	<b>\$ 1,800</b>	<b>\$ 150</b>	<b>\$ 150</b>	<b>\$ 150</b>	<b>\$ 150</b>	<b>\$ 150</b>	<b>\$ 150</b>	<b>\$ 150</b>	<b>\$ 150</b>	<b>\$ 150</b>	<b>\$ 150</b>	<b>\$ 150</b>	<b>\$ 150</b>	<b>\$ -</b>

<b>Total Fee</b>	<b>\$ 2,735,786</b>	<b>\$ 181,397</b>	<b>\$ 249,993</b>	<b>\$ 228,267</b>	<b>\$ 239,130</b>	<b>\$ 228,267</b>	<b>\$ 228,267</b>	<b>\$ 228,267</b>	<b>\$ 217,404</b>	<b>\$ 239,130</b>	<b>\$ 228,267</b>	<b>\$ 239,130</b>	<b>\$ 228,267</b>	<b>\$ -</b>
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Local Business participation (Hattin)	\$ 1,278,524	76,658	117,629	107,401	112,515	107,401	107,401	107,401	102,286	112,515	107,401	112,515	107,401	-
Percentage LBE	46.73%	42.3%	47.1%	47.1%	47.1%	47.1%	47.1%	47.1%	47.1%	47.1%	47.1%	47.1%	47.1%	46.7%





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/24/2022

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

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

<b>PRODUCER</b> Marsh & McLennan Agency LLC Marsh & McLennan Ins. Agency LLC 1 Polaris Way #300 Aliso Viejo CA 92656	<b>CONTACT NAME:</b> Stephanie Holly <b>PHONE (A/C, No. Ext):</b> <b>FAX (A/C, No):</b> <b>E-MAIL ADDRESS:</b> occerts@marshmma.com
	<b>INSURER(S) AFFORDING COVERAGE</b>
License#: 0H18131 CUMMIGROUP	<b>INSURER A:</b> The Continental Insurance Company <b>INSURER B:</b> Berkshire Hathaway Specialty Ins Co <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>
<b>INSURED</b> Cumming Management Group, Inc. 25220 Hancock Avenue Suite 440 Murrieta CA 92562	<b>NAIC #</b> 35289 22276

**COVERAGES**

CERTIFICATE NUMBER: 485066911

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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> 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 OTHER:	Y	Y	6056835935	12/31/2022	12/31/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 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 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	6056835949	12/31/2022	12/31/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 5,000		Y	6020879487	12/31/2022	12/31/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	6056835952 6056835966	12/31/2022 12/31/2022	12/31/2023 12/31/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Professional E&O Retro 11/07/2006		N	47EPP31356503	12/31/2022	12/31/2023	Per Claim \$5,000,000 Policy Aggregate \$5,000,000 Retention \$250,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

Re: Construction Management - All OUSD projects. The Oakland Unified School District, the Construction Manager, their representatives, consultants, trustees, officers, officials, employees, agents, and volunteers are named as Additional Insured on General Liability, per the attached endorsement CNA75079XX (1-15); Automobile Liability per the attached endorsement CNA71527XX (10-12); and Umbrella Liability per the attached endorsement CNA75504XX (03-2015). General Liability Insurance is Primary and Non-Contributory, per 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.

**CERTIFICATE HOLDER****CANCELLATION**

Oakland Unified School District; Attn: Risk Management  
 955 High Street  
 Oakland CA 94601-0000

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

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## DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

### Project Information

<b>Project Name</b>	Facilities Planning & Management Construction Management Project	<b>Site</b>	918
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### Basic Directions

**Services cannot be provided until the contract is awarded by the Board or is entered by the Superintendent pursuant to authority delegated by the Board.**

<b>Attachment Checklist</b>	<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
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### Contractor Information

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

### Term of Original/Amended Contract

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

### Compensation/Revised Compensation

<b>If New Contract, Total Contract Price (Lump Sum)</b>	\$	<b>If New Contract, Total Contract Price (Not To Exceed)</b>	\$
<b>Pay Rate Per Hour (If Hourly)</b>	\$	<b>If Amendment, Change in Price</b>	\$ 2,733,986.00
<b>Other Expenses</b>		<b>Requisition Number</b>	

### Budget Information

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

Resource #	Funding Source	Org Key	Object Code	Amount
9655/0000	Fund 21 Measure Y	210-9655-0-0000-8500-6289-918-9180-9906-9999-99999	6289	\$2,733,986.00

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

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

	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b>	510-535-7082
1.	<b>Executive Director, Facilities Planning &amp; Management</b>	<b>Signature</b>	<i>[Signature]</i>		
		<b>Date Approved</b>	8/18/23		
2.	<b>General Counsel, Department of Facilities Planning and Management</b>	<b>Signature</b>	<i>[Signature]</i>		
	Lozano Smith, approved as to form	<b>Date Approved</b>	8/17/23		
3.	<b>Chief Systems &amp; Services, Facilities Planning &amp; Management</b>	<b>Signature</b>	<i>[Signature]</i>		
		<b>Date Approved</b>	8/18/23		
4.	<b>Chief Financial Officer</b>	<b>Signature</b>			
		<b>Date Approved</b>			
5.	<b>President, Board of Education</b>	<b>Signature</b>			
		<b>Date Approved</b>			



<b>Board Office Use: Legislative File Info.</b>	
File ID Number	22-1579
Introduction Date	6-29-2022
Enactment Number	22-1333
Enactment Date	6/29/2022 os




**OAKLAND UNIFIED  
SCHOOL DISTRICT**

*Community Schools, Thriving Students*

## Memo

**To** Board of Education

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

**Board Meeting Date** June 29, 2022

**Subject** Amendment No. 1 Construction Management Agreement – Cumming Management Group, Inc. – Facilities Planning and Management Project – Division of Facilities Planning and Management

**Action Requested** Approval by the Board of Education of Amendment No.1, Construction Management Agreement by and between the **District** and **Cumming Management Group, Inc.**, Oakland, CA, for the latter to provide continued Construction Management Services, Project Engineers and Project Scheduler for the **Facilities Planning and Management Project**, in an additional not-to-exceed amount of **\$2,450,840.00** increasing the Agreement's total not-to-exceed amount from **\$900,000.00** to **\$3,350,840.00**, and authorizing the President and Secretary of the Board to sign the Amendment for same with said Contractor, pursuant to the Amendment.

**Discussion** This Amendment is for continued Measure J construction management services.

**LBP** (Local business participation percentage) 50.00%

**Recommendation** Approval by the Board of Education of Amendment No.1, Construction Management Agreement by and between the **District** and **Cumming Management Group, Inc.**, Oakland, CA, for the latter to provide continued Construction Management Services, Project Engineers and Project Scheduler for the **Facilities Planning and Management Project**, in an additional not-to-exceed amount of **\$2,450,840.00** increasing the Agreement's total not-to-exceed amount from **\$900,000.00** to **\$3,350,840.00**, and authorizing the President and Secretary of the Board to sign the Amendment for same with said Contractor, pursuant to the Amendment.

**Fiscal Impact** Fund 21 Building Fund, Measure J

**Attachments**

- Amendment No. 1, including Exhibits
- Insurance Certificate
- Routing Form

## AMENDMENT NO. 1

### CONSTRUCTION MANAGEMENT AGREEMENT

This Amendment is entered into between the Oakland Unified School District (OUSD) and **Cumming Management Group, Inc.** OUSD entered into an agreement with CONTRACTOR for services on **August 26, 2021** ("Agreement"), and the parties agree to amend the Agreement for the Services with **Facilities Planning & Management Construction Management Project** as follows and as set forth in Exhibit A:

<b>1.</b>	<b>Services:</b>	<input checked="" type="checkbox"/> The scope of work is <u>unchanged</u> .	<input type="checkbox"/> The scope of work has <u>changed</u> .
<p><b>If scope of work changed:</b> Provide brief description of revised scope of work including description of expected final results, such as services, materials, products, and/or reports; attach additional pages as necessary.</p> <p><b>The CONTRACTOR agrees to provide the following amended services:</b></p>			
<b>2.</b>	<b>Terms (duration):</b>	<input checked="" type="checkbox"/> The term of the contract is <u>unchanged</u> .	<input type="checkbox"/> The term of the contract has <u>changed</u> .
<p><b>If term is changed:</b> The contract term is extended by an additional _____, and the amended expiration date is _____.</p>			
<b>3.</b>	<b>Compensation:</b>	<input type="checkbox"/> The contract price is <u>unchanged</u> .	<input checked="" type="checkbox"/> The contract price has <u>changed</u> .
<p><b>If the compensation is changed:</b> The total not to exceed contract price is</p> <p style="text-align: center;"><b><u>X Increased by: Two Million, Four Hundred Fifty Thousand, Eight Hundred Forty dollars NO/100 (\$2,450,840.00), of which \$2,450,240.00 is for basic services and \$600.00 is for Reimbursable Expenses.</u></b></p> <p><input type="checkbox"/> Decreased by _____ dollars and no/100 (\$ _____).</p> <p>Prior to this amendment, the total not to exceed contract price was <b><u>Nine Hundred Thousand Dollars No/100 (\$900,000.00)</u></b>, and after this amendment, the total not to exceed contract price will be: <b><u>Three Million, Three Hundred Fifty Thousand, Eight Hundred Forty dollars NO/100 (\$3,350,840.00)</u></b>.</p>			

**4. Remaining Provisions:** All other provisions of the Agreement, and prior Amendment(s) if any, shall remain unchanged and in full force and effect as originally stated.

**5. Amendment History:**

There are no previous amendments to this Agreement.  This contract has previously been amended as follows:

No.	Date	General Description of Reason for Amendment	Amount of Increase (Decrease)

**6. Approval:** This Amendment is not effective, and no payment shall be made to Contractor based on this Amendment, until it is signed by Contractor and approved by the Board of Education.

OAKLAND UNIFIED SCHOOL DISTRICT

850.4  
Gary Yee, President, Board of Education

6/30/2022  
Date

[Signature]  
Kyla Johnson-Trammell, Superintendent  
and Secretary, Board of Education

6/30/2022  
Date

CONTRACTOR

[Signature] 6-10-2022  
Contractor Signature Date

JOHN OLSSON  
Print Name, Title SENIOR DIRECTOR

[Signature] 6-17-22  
Tadashi Nakadegawa, Deputy Chief  
Facilities Planning and Management

Approval as to form:

[Signature] 6/16/22  
Arne Sandberg (name) Date  
General Counsel, Facilities, Planning and Management

**EXHIBIT "A"**  
**Scope of Work for Amendment**

**Contractor Name: Cumming Management Group, Inc.**

1. Detailed Description of Services to be provided: No change to scope of work.
2. Specific Outcomes:
3. Alignment with District Strategic Plan: Indicate the goals and visions supported by the services of this contract:

<input type="checkbox"/> Ensure a high quality instructional core	<input type="checkbox"/> Prepare students for success in college and careers
<input type="checkbox"/> Develop social, emotional and physical health	<input checked="" type="checkbox"/> Safe, healthy and supportive schools
<input checked="" type="checkbox"/> Create equitable opportunities for learning	<input checked="" type="checkbox"/> Accountable for quality
<input type="checkbox"/> High quality and effective instruction	<input type="checkbox"/> Full service community district

May 17, 2022

Kenya Chatman  
Director of Facilities  
Oakland Unified School District  
955 High Street  
Oakland, CA 94601

RE: Construction Project Management Services July 2022 through June 2023

Dear Ms. Chatman:

Thank you for giving Cumming Management Group the opportunity to provide this Construction Project Management Services proposal to Oakland Unified School District (OUSD) for Construction Management Services for Measure Y projects for your next fiscal year period.

Included in this proposal:

- 1) Project Understanding
- 2) Project Management Scope of Services and Fee Proposal
- 3) Hourly Rates and projected fee schedule

Please do not hesitate to contact me to discuss in further detail. We are confident that we will arrive at an arrangement that meets your needs.

Respectfully submitted,  
Cumming Construction Management, Inc.



John D. Olsson  
Senior Director, LEED, CCM

Cc: Elena Comrie

---



## **1. SECTION 1 - PROJECT UNDERSTANDING**

We understand the scope of the project includes the Construction Management of various Construction projects for the Oakland Unified School District as part of the Bond Measure Y program.

Our services start date will be July 1, 2021, and our services will continue through June 30, 2023.

## **2. SECTION 2 - SCOPE OF SERVICES and FEE**

### **PROJECT MANAGEMENT**

We propose to support OUSD in the Project Management of the project(s) by providing Elena Comrie as Senior Program Manager, three project engineers and three Construction Managers.

We assume that OUSD will maintain the overall development budget with input and advice from our team as required. We will actively assist in managing to the established budget.

We propose to provide our services on a time-and-materials basis according to the Hourly Rate schedule described in this proposal, plus reimbursable expenses. We will invoice monthly in arrears based on actual time spent and will always strive to be as time and hence cost efficient as possible.

The attached PPME fee calculation spreadsheet represents our anticipated efforts, and we will not exceed the estimated total fee stated below without obtaining authorization from OUSD. We believe this will provide a level of flexibility to OUSD while ensuring the project receives the service level it needs, which based on our experience we know will fluctuate during the proposed period.

**Total GMP is: \$2,450,840**

The above is not a lump sum fee. Should the project schedule be adjusted, whether extended or reduced, we will work with you to develop a revised arrangement and adjust our estimated efforts and fee to align.

### **LOCAL BUSINESS ENTERPRISE**

Layas Partnership has joined our team. They are an Oakland based LBE that is familiar with OUSD as they have worked with the District. We are including our other LBE Hattin CM as well and expect to add to their team.

### **OTHER SERVICES**

Scheduling, estimating, risk management analysis, or additional project management can be provided with our in-house team members. If such a need arises, we will develop an arrangement that works for you and provide a separate proposal.

---

## REIMBURSABLE EXPENSES

Any reimbursable expenses will be billed at cost.

We are excited to work with OUSD and look forward to the opportunity to add value to this exciting project.

Should this proposal be acceptable, please sign and return to us:

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

The accepted proposal will be made part of a Professional Services Agreement to be executed between OUSD and Cumming.

### 3. SECTION 3 – CUMMING HOURLY RATES

#### Project Management

Senior Construction Manager (Elena Comrie)	\$185.00
Construction Managers (Saurin Kakkad + Layas + TBD)	\$170.00
Project Engineer (Imelda Meza -Hattin)	\$135.00
Project Engineer (Sam Smith +TBD)	\$135.00

See Attached PPME for estimated fee schedule.

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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
12/30/2021

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

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

<b>PRODUCER</b> Marsh & McLennan Agency LLC Marsh & McLennan Ins. Agency LLC 1 Polaris Way #300 Aliso Viejo, CA 92656	<b>CONTACT NAME:</b> Stephanie M Holly <b>PHONE (A/C, No, Ext):</b> 949-540-6947 <b>FAX (A/C, No):</b> <b>E-MAIL ADDRESS:</b> OCcerts@marshmma.com													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : The Continental Insurance Company</td> <td>35289</td> </tr> <tr> <td>INSURER B : American Casualty Company or Reading PA</td> <td>20427</td> </tr> <tr> <td>INSURER C : Berkshire Hathaway Specialty Ins Co</td> <td>22276</td> </tr> <tr> <td>INSURER D : Continental Casualty Company</td> <td>20443</td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : The Continental Insurance Company	35289	INSURER B : American Casualty Company or Reading PA	20427	INSURER C : Berkshire Hathaway Specialty Ins Co	22276	INSURER D : Continental Casualty Company	20443	INSURER E :		INSURER F :
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<b>INSURED</b> Cumming Management Group, 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	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	6056835935	12/31/2021	12/31/2022	EACH OCCURRENCE \$ <b>1,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>300,000</b> MED EXP (Any one person) \$ <b>15,000</b> PERSONAL & ADV INJURY \$ <b>1,000,000</b> GENERAL AGGREGATE \$ <b>2,000,000</b> PRODUCTS - COMP/OP AGG \$ <b>2,000,000</b> \$
D	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY	X	X	6056835949	12/31/2021	12/31/2022	COMBINED SINGLE LIMIT (Ea accident) \$ <b>1,000,000</b> BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ <b>5,000</b>	X	X	6020879487	12/31/2021	12/31/2022	EACH OCCURRENCE \$ <b>5,000,000</b> AGGREGATE \$ <b>5,000,000</b> \$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			6056835952	12/31/2021	12/31/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ <b>1,000,000</b> E.L. DISEASE - EA EMPLOYEE \$ <b>1,000,000</b> E.L. DISEASE - POLICY LIMIT \$ <b>1,000,000</b>
C	<b>Professional E&amp;O</b> Retro 11/07/2006			47EPP31356502	12/31/2021	12/31/2022	\$ <b>5,000,000</b> per Claim \$ <b>5,000,000</b> Policy Agg \$ <b>250,000</b> Retention

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
**Re: Construction Management - All OUSD projects. The Oakland Unified School District, the Construction Manager, their representatives, consultants, trustees, officers, officials, employees, agents, and volunteers are named as Additional Insured on General Liability, per the attached endorsement CNA75079XX (1-15); Automobile Liability per the attached endorsement CNA71527XX (10-12); and Umbrella Liability per the attached endorsement CNA75504XX (03-2015). General Liability Insurance is Primary and Non-Contributory, per (See Attached Descriptions)**

<b>CERTIFICATE HOLDER</b> Oakland Unified School District Attn: Risk Management 955 High Street Oakland, CA 94601-0000	<b>CANCELLATION</b> 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 
--	--

## 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.


**CNA PARAMOUNT**
**Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

- I. WHO IS AN INSURED** is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage** or **personal and advertising injury** caused in whole or in part by your acts or omissions, or the acts or omissions of those acting on your behalf:
- A.** in the performance of your ongoing operations subject to such **written contract**; or
  - B.** in the performance of **your work** subject to such **written contract**, but only with respect to **bodily injury** or **property damage** included in the **products-completed operations hazard**, and only if:
    - 1. the **written contract** requires you to provide the additional insured such coverage; and
    - 2. this **coverage part** provides such coverage.
- II.** But if the **written contract** requires:
- A.** additional insured coverage under the 11-85 edition, 10-93 edition, or 10-01 edition of CG2010, or under the 10-01 edition of CG2037; or
  - B.** additional insured coverage with "arising out of" language; or
  - C.** additional insured coverage to the greatest extent permissible by law;
- then paragraph **I.** above is deleted in its entirety and replaced by the following:
- WHO IS AN INSURED** is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage** or **personal and advertising injury** arising out of **your work** that is subject to such **written contract**.
- III.** Subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:
- A.** coverage broader than required by the **written contract**; or
  - B.** a higher limit of insurance than required by the **written contract**.
- IV.** The insurance granted by this endorsement to the additional insured does not apply to **bodily injury, property damage**, or **personal and advertising injury** arising out of:
- A.** the rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:
    - 1. the preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
    - 2. supervisory, inspection, architectural or engineering activities; or
  - B.** any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this **coverage part**.
- V.** Under **COMMERCIAL GENERAL LIABILITY CONDITIONS**, the Condition entitled **Other Insurance** is amended to add the following, which supersedes any provision to the contrary in this Condition or elsewhere in this **coverage part**:

CNA75079XX (10-16)

Page 1 of 2





**Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement**

**Primary and Noncontributory Insurance**

With respect to other insurance available to the additional insured under which the additional insured is a named insured, this insurance is primary to and will not seek contribution from such other insurance, provided that a **written contract** requires the insurance provided by this policy to be:

1. primary and non-contributing with other insurance available to the additional insured; or
2. primary and to not seek contribution from any other insurance available to the additional insured.

But except as specified above, this insurance will be excess of all other insurance available to the additional insured.

**VI. Solely with respect to the insurance granted by this endorsement, the section entitled COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:**

The Condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended with the addition of the following:

Any additional insured pursuant to this endorsement will as soon as practicable:

1. give the Insurer written notice of any **claim**, or any **occurrence** or offense which may result in a **claim**;
2. send the Insurer copies of all legal papers received, and otherwise cooperate with the Insurer in the investigation, defense, or settlement of the **claim**; and
3. make available any other insurance, and tender the defense and indemnity of any **claim** to any other insurer or self-insurer, whose policy or program applies to a loss that the Insurer covers under this **coverage part**. However, if the **written contract** requires this insurance to be primary and non-contributory, this paragraph **3.** does not apply to insurance on which the additional insured is a named insured.

The Insurer has no duty to defend or indemnify an additional insured under this endorsement until the Insurer receives written notice of a **claim** from the additional insured.

**VII. Solely with respect to the insurance granted by this endorsement, the section entitled DEFINITIONS is amended to add the following definition:**

**Written contract** means a written contract or written agreement that requires you to make a person or organization an additional insured on this **coverage part**, provided the contract or agreement:

- A. is currently in effect or becomes effective during the term of this policy; and
- B. was executed prior to:
  1. the **bodily injury** or **property damage**; or
  2. the offense that caused the **personal and advertising injury**;for which the additional insured seeks coverage.

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

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.





**CNA PARAMOUNT**

**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.

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<b>5. Broad Named Insured</b>
<b>6. Estates, Legal Representatives and Spouses</b>
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<b>9. Incidental Health Care Malpractice Coverage</b>
<b>10. Joint Ventures/Partnership/Limited Liability Companies</b>
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<b>12. Medical Payments</b>
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<b>14. Non-owned Watercraft</b>
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<b>19. Unintentional Failure To Disclose Hazards</b>
<b>20. Waiver of Subrogation – Blanket</b>

50020003560568359351943

**General Liability Extension Endorsement****1. ADDITIONAL INSUREDS**

- 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 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, hoistaway 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.



**General Liability Extension Endorsement****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,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.

## General Liability Extension Endorsement

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.

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**

**General Liability Extension Endorsement**

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. in 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**,

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**.

**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
- 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:



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(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.

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



**General Liability Extension Endorsement**

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.

The Damage To Premises Rented To You Limit is \$200,000. unless a higher 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 11.** 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: \_\_\_\_\_ ; 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

## 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.

#### 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**.

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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
- (2) assumed in a contract or 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 **e.(2)** of the Contractual Liability exclusion (as amended by this Endorsement), such payments will

## General Liability Extension Endorsement

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
- 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.





POLICYHOLDER NOTICE - COUNTRYWIDE

It is understood and agreed that:

If the **Named Insured** has 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 the Insurer cancels 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 Certificate holders 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 Certificate holder on file with the Agent of Record will be sufficient to prove notice.

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

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 Policy Effective date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy.



## General Aggregate Limit - Per Project Endorsement

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

- I. For each single construction or service project away from premises the **Named Insured** owns or rents, a separate Project General Aggregate Limit, equal to the amount of the General Aggregate Limit shown in the Declarations, is the most the Insurer will pay for the sum of:
  - A. all **damages** under **Coverage A**, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and
  - B. all medical expenses under **Coverage C**;  
that arise from **occurrences** or accidents which can be attributed solely to ongoing operations at that project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations, nor the Project General Aggregate Limit applicable to any other project.
- II. All:
  - A. **damages** under **Coverage B**, regardless of the number of locations or projects involved;
  - B. **damages** under **Coverage A**, caused by **occurrences** which cannot be attributed solely to ongoing operations at a single project, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and
  - C. medical expenses under **Coverage C**, caused by accidents which cannot be attributed solely to ongoing operations at a single project,  
will reduce the General Aggregate Limit shown in the Declarations.
- III. The limits shown in the Declarations for Each Occurrence, for Damage To Premises Rented To You and for Medical Expense continue to apply, but will be subject to either the Project General Aggregate Limit or the General Aggregate Limit shown in the Declarations, depending on whether the **occurrence** can be attributed solely to ongoing operations at a particular project.
- IV. When coverage for liability arising out of the **products-completed operations hazard** is provided, any payments for **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard** will reduce the Products-Completed Operations Aggregate Limit shown in the Declarations, regardless of the number of projects involved.
- V. If a single construction or service project away from premises owned by or rented to the **Named Insured** has been abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, such project will still be deemed to be the same project.
- VI. The provisions of **LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to apply as stipulated.

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.



## General Aggregate Limit - Per Location Endorsement

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

- I. For each single **location**, a separate **Location** General Aggregate Limit, equal to the amount of the General Aggregate Limit shown in the Declarations, is the most the Insurer will pay for the sum of:
  - A. all **damages** under **Coverage A**, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and
  - B. all medical expenses under **Coverage C**;
 

that arise from **occurrences** or accidents which can be attributed solely to ongoing operations at that **location**. Such payments shall not reduce the General Aggregate Limit shown in the Declarations, nor the **Location** General Aggregate Limit applicable to any other **location**.
- II. All:
  1. **damages** under **Coverage B**, regardless of the number of **locations** or projects involved;
  2. **damages** under **Coverage A**, caused by **occurrences** which cannot be attributed solely to ongoing operations at a single **location**, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and
  3. medical expenses under **Coverage C** caused by accidents which cannot be attributed solely to ongoing operations at a particular **location**,

will reduce the General Aggregate Limit shown in the Declarations.
- III. The limits shown in the Declarations for Each Occurrence, for Damage To Premises Rented To You and for Medical Expense continue to apply, but will be subject to either the **Location** General Aggregate Limit or the General Aggregate Limit shown in the Declarations, depending on whether the **occurrence** can be attributed solely to ongoing operations at a single **location**.
- IV. When coverage for liability arising out of the **products-completed operations hazard** is provided, any payments for **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard** will reduce the Products-Completed Operations Aggregate Limit shown in the Declarations, regardless of the number of **locations** involved.
- V. For the purposes of this endorsement, the following Definition is added:
 

**Location** means premises owned by or rented to the **Named Insured** involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad. **Location** does not mean any operation or project away from premises owned by or rented to the **Named Insured**.
- VI. The provisions of **LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to apply as stipulated.

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 Management Group, Inc.

POLICY #: 6056835949

POLICY  
PERIOD:

12/31/2021

TO: 12/31/2022



**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: Cumming Management Group, Inc.

POLICY #: 6056835949

POLICY PERIOD: 12/31/2021

TO 12/31/2022



**Business Auto Policy  
Policy Endorsement**

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

BUSINESS AUTO COVERAGE FORM

MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

**Named Insured:** Cumming Management Group, Inc.

**Endorsement Effective Date:** 12/31/2021

**SCHEDULE**

**Name(s) Of Person(s) Or Organization(s):**

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.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**The Transfer Of Rights Of Recovery Against Others To Us condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.**

Form No: CA 04 44 10 13

Endorsement No: 7; Page 1 of 1

Underwriting Company: Continental Casualty Company, 151 N Franklin St., Chicago, IL 60606

INSURED: Cumming Management Group, Inc.

POLICY #: 6056835952

POLICY PERIOD: 12/31/2021

TO 12/31/2022



**Workers Compensation And Employers Liability Insurance  
Policy Endorsement**

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

**Schedule**

Any Person or Organization on whose behalf you are required to obtain this waiver of our right to recover from under a written contract or agreement.

The premium charge for the endorsement is reflected in the Schedule of Operations.

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 Policy Effective Date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy unless another expiration date is shown below.

Form No: WC 00 03 13 (04-1984)



**CNA Paramount Excess and Umbrella Liability  
Policy**

or organization which may be liable to the **Insured** because of injury or damage to which this insurance may also apply; and

- vi. will not voluntarily make a payment, except at its own cost, assume any obligation, or incur any expense, other than for first aid, without the Insurer's prior consent.

### 3. Cooperation

With respect to both **Coverage A - Excess Follow Form Liability** and **Coverage B - Umbrella Liability**, the **Named Insured** will cooperate with the Insurer in addressing all **claims** required to be reported to the Insurer in accordance with this paragraph **O. Notice of Claims/Crisis Management Event/Covered Accident**, and refuse, except solely at its own cost, to voluntarily, without the Insurer's approval, make any payment, admit liability, assume any obligation or incur any expense related thereto.

### P. Notices

Any notices required to be given by an **Insured** shall be submitted in writing to the Insurer at the address set forth in the Declarations of this Policy.

### Q. Other Insurance

If the **Insured** is entitled to be indemnified or otherwise insured in whole or in part for any **damages** or **defense costs** by any valid and collectible **other insurance** for which the **Insured** otherwise would have been indemnified or otherwise insured in whole or in part by this Policy, the limits of insurance specified in the Declarations of this Policy shall apply in excess of, and shall not contribute to a **claim, incident** or such event covered by such **other insurance**.

With respect to **Coverage A - Excess Follow Form Liability** only, if:

- a. the **Named Insured** has agreed in writing in a contract or agreement with a person or entity that this insurance would be primary and would not seek contribution from any other insurance available;
- b. **Underlying Insurance** includes that person or entity as an additional insured; and
- c. **Underlying Insurance** provides coverage on a primary and noncontributory basis as respects that person or entity;

then this insurance is primary to and will not seek contribution from any insurance policy where that person or entity is a named insured.

### R. Premium

All premium charges under this Policy will be computed according to the Insurer's rules and rating plans that apply at the inception of the current **policy period**. Premium charges may be paid to the Insurer or its authorized representative.

### S. In Rem Actions

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

### T. Separation of Insureds

Except with respect to the limits of insurance, and any rights or duties specifically assigned in this Policy to the **First Named Insured**, this insurance applies:

- 1. as if each **Named Insured** were the only **Named Insured**; and
- 2. separately to each **Insured** against whom a **claim** is made.

### U. Transfer<sup>y</sup> of Interest



## CNA Paramount Excess and Umbrella Liability Policy

Assignment of interest under this policy shall not bind the Insurer unless its consent is endorsed hereon.

### V. Unintentional Omission

Based on Insurer's reliance on the **Named Insured's** representations as to existing hazards, if the **Named Insured** should unintentionally fail to disclose all such hazards at the effective date of this Policy, the Insurer will not deny coverage under this Policy because of such failure.

### W. Waiver of Rights of Recovery

The Insurer waives any right of recovery it may have against any person or organization because of payments the Insurer makes under this Policy if the **Named Insured** has agreed in writing to waive such rights of recovery in a contract or agreement, and only if the contract or agreement:

1. is in effect or becomes effective during the **policy period**; and
2. was executed prior to loss.

## VII. DEFINITIONS

For purposes of this Policy, words in bold face type, whether expressed in the singular or the plural, have the meaning set forth below.

**Advertisement** means a notice that is broadcast or published to the general public or specific market segments about the **Named Insured's** goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- A. notices that are published include material placed on the Internet or on similar electronic means of communication; and
- B. regarding web-sites, only that part of a web-site that is about the **Named Insured's** goods, products or services for the purposes of attracting customers or supporters is considered an **advertisement**.

**Aircraft** means any machine or device that is capable of atmospheric flight.

**Arbitration proceeding** means a formal alternative dispute resolution proceeding or administrative hearing to which an **Insured** is required to submit by statute or court rule or to which an **Insured** has submitted with the Insurer's consent.

**Asbestos** means the mineral in any form whether or not the asbestos was at any time airborne as a fiber, particle or dust, contained in or formed a part of a product, structure or other real or personal property, carried on clothing, inhaled or ingested, or transmitted by any other means.

**Authorized Insured** means any **executive officer**, member of the **Named Insured's** risk management or in-house general counsel's office, or any **employee** authorized by the **Named Insured** to give or receive notice of a **claim**.

**Auto** means:

- A. a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- B. any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, **auto** does not include **mobile equipment**.

**Bodily injury** means bodily 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 bodily injury, sickness or disease.

**Claim** means a:

- A. **suit**; or



## DIVISION OF FACILITIES PLANNING AND MANAGEMENT ROUTING FORM

### Project Information

<b>Project Name</b>	Facilities Planning & Management Project	<b>Site</b>	918
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### Basic Directions

**Services cannot be provided until the contract is awarded by the Board or is entered by the Superintendent pursuant to authority delegated by the Board.**

<b>Attachment Checklist</b>	<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
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### Contractor Information

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

### Term of Original/Amended Contract

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

### Compensation/Revised Compensation

<b>If New Contract, Total Contract Price (Lump Sum)</b>	\$	<b>If New Contract, Total Contract Price (Not To Exceed)</b>	\$
<b>Pay Rate Per Hour (if Hourly)</b>	\$	<b>If Amendment, Change in Price</b>	\$ 2,450,840.00
<b>Other Expenses</b>		<b>Requisition Number</b>	

### Budget Information

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

Resource #	Funding Source	Org Key	Object Code	Amount
9650/0000	Fund 21/Measure J	210-9650-0-000-8500-6289-918-9180-9905-9999-99999	6289	\$2,450,840.00

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

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

	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b>	510-535-7082
1.	<b>Executive Director, Facilities Planning and Management</b>				
	<b>Signature</b> <i>Renaud</i>	<b>Date Approved</b>	6-17-22		
2.	<b>General Counsel, Department of Facilities Planning and Management</b>				
	<b>Signature</b> <i>Lozano Smith</i>	<b>Date Approved</b>	6/16/2022		
3.	<b>Deputy Chief, Facilities Planning and Management</b>				
	<b>Signature</b> <i>Renaud for T.N.</i>	<b>Date Approved</b>	6-17-22		
4.	<b>Chief Financial Officer</b>				
	<b>Signature</b>	<b>Date Approved</b>			
5.	<b>President, Board of Education</b>				
	<b>Signature</b>	<b>Date Approved</b>			



<b>Board Office Use: Legislative File Info.</b>	
File ID Number	21-1455
Introduction Date	8-25-2021
Enactment Number	21-1358
Enactment Date	8/25/2021 lf



**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%

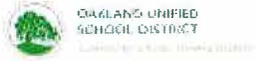
**Recommendation** Approval by the Board of Education of Construction Management Agreement between the District and Cumming Management Group, Inc., Oakland, California, for the latter to provide planning, coordination and construction management services through the completion of the District’s Measure 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>
<b>Coliseum College Prep Academy (1390 66<sup>th</sup> Avenue)</b>	› Site expansion › Additional classrooms	\$35.5	Site-Specific Projects
<b>Claremont Middle School (5750 College Avenue)</b>	› New kitchen › New cafeteria	\$18.0	Site-Specific Projects
<b>Elmhurst United Middle School (1800 98th Avenue)</b>	› Site modernization	\$10.0	Site-Specific Projects
<b>Garfield Elementary School (1640 22nd Avenue)</b>	› Site renovation or replacement (partial or total)	\$56.7	Site-Specific Projects
<b>Hillcrest Elementary School (30 Marguerite Drive)</b>	› New kitchen	\$1.7	Site-Specific Projects
<b>Laurel Child Development Center (3825 California Street)</b>	› Site renovation or replacement (partial or total)	\$11.5	Site-Specific Projects
<b>Marcus Foster Educational Leadership Center (1025 2nd Avenue)</b>	› 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
<b>McClymonds High School (2607 Myrtle Street)</b>	› Site renovation or replacement (partial or total) › Site expansion to accommodate additional grade levels	\$65.0	Site-Specific Projects
<b>Melrose Leadership Academy/ Maxwell Park</b>	› Site renovation (partial or total) › Site expansion/school	\$49.5	Site-Specific Projects

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



## 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

<b>Project Name</b>	Facilities Planning & Management Project	<b>Site</b>	918
<b>Basic Directions</b>			
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.			
<b>Attachment Checklist</b>	<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

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

### Term of Original/Amended Contract

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

### Compensation/Revised Compensation

<b>If New Contract, Total Contract Price (Lump Sum)</b>	\$	<b>If New Contract, Total Contract Price (Not To Exceed)</b>	\$900,000.00
<b>Pay Rate Per Hour (if Hourly)</b>	\$	<b>If Amendment, Change in Price</b>	\$
<b>Other Expenses</b>		<b>Requisition Number</b>	

### Budget Information

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

Resource #	Funding Source	Org Key	Object Code	Amount
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.

	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b>	510-535-7082
1.	<b>Acting Director, Facilities Planning and Management</b>				
	<b>Signature</b> <i>K Chatman</i>	<b>Date Approved</b>	7/21/21		
2.	<b>General Counsel, Department of Facilities Planning and Management</b>				
	<b>Signature</b> <i>Lozano Smith</i> , as to form only	<b>Date Approved</b>	7/15/21		
3.	<b>Deputy Chief, Facilities Planning and Management</b>				
	<b>Signature</b> <i>[Signature]</i>	<b>Date Approved</b>	7/21/21		
4.	<b>Chief Financial Officer</b>				
	<b>Signature</b>	<b>Date Approved</b>			
5.	<b>President, Board of Education</b>				
	<b>Signature</b>	<b>Date Approved</b>			