

**San Mateo-Foster City School District
Facilities Department
1410 S. Amphlett Blvd.
San Mateo, CA 94402**

**INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES
(CONSTRUCTION RELATED)**

THIS CONTRACT is made and entered into this Nineteen day of March, 2018 ("Contract"), by and between **Glumac, Inc., Located at 2033 Gateway Pl., Suite 608, San Jose, CA 95110** ("Consultant") and **San Mateo-Foster City School District** ("District"). Consultant and District may be referred to herein individually as a "Party" or collectively as the "Parties."

1. **Contract Price & Services.** the Consulting shall furnish to the District for a total price of **Twenty-three Thousand Five Hundred Fifty & ^{NO}/_{XX} Dollars (\$23,550.00)** ("Contract Price"), of which **\$2,000.00** is a reimbursable expense, for the following consulting, construction related, services ("Services" or "Work"):

Scope: Includes Commissioning (Cx) services for the mandatory commissioning per Title 24-Part 6 2016 (Energy Code) requirements for the Abbott Middle School new gym and classrooms project as outlined in the Design Development Drawing and Spec set dated October 27, 2017. Please refer to the attached Exhibit "A" for full scope of work.

2. **Payment.** Payment for the Work shall be made in accordance with the Terms and Conditions attached hereto.
3. **Site.** Consultant shall perform the Work at **Abbott Middle School New GYM and Classrooms located at 600 36th Ave., San Mateo, CA 94403** ("Premises" or "Site"). The Project is the scope of Work performed at the Site.
4. **Contract Time & Liquidated Damages.** Work shall be completed by **TBD** ("Contract Time"). Contractor agrees that if the Work is not completed within the Contract Time and/or pursuant to the completion schedule, construction schedule, or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged, and agreed that the District will suffer damage which is not capable of being calculated. Pursuant to Government Code section 53069.85, Contractor shall pay to the District, as fixed and liquidated damages for these incalculable damages, the sum of per day for each and every calendar day of delay beyond the Contract Time or beyond any completion schedule, construction schedule, or Project milestones established pursuant to the Contract. **N/A**
5. **Bonds & Insurance.**
 - a. **Payment Bond & Performance Bond:** Consultant shall not commence the Work until it has provided to the District, a Payment (Labor and Material) Bond and a Performance Bond, in the forms attached hereto, each in an amount equivalent to one hundred percent (100%) of the Contract Price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District. **N/A**
 - b. **Insurance:** Consultant shall have and maintain in force during the term of this Contract, with the minimum indicated limits, the following insurance:

Commercial General Liability , with Products and Completed Operations Coverage	\$1,000,000 per occurrence; \$2,000,000 aggregate
Automobile Liability, Any Auto , Combined Single Limit	\$1,000,000 per occurrence; \$2,000,000 aggregate
Workers Compensation	Statutory limits pursuant to State law
Employers' Liability	\$1,000,000

Contractor shall provide to the District certificate(s) of insurance and endorsements satisfactory to the District. The policy(ies) shall not be amended or modified and the coverage amounts shall not be reduced without thirty (30) days written notice to the District prior to cancellation. Except for worker's compensation insurance, the District, the Architect, and the Project Manager shall be named as an additional insured on all policies. Contractor's policy(ies) shall be primary; any insurance carried by the District shall only be secondary and supplemental. Contractor shall not allow any subcontractor, employee, or agent to commence Work on this Contract or any subcontract until the insurance required of Contractor, subcontractor, or agent has been obtained.

- 6. **Project Oversight.** Inspection and acceptance of the Work shall be performed by Project Manager of the Facilities Department of the District. The architect for the Project is CAW ("Architect").
- 7. **Terms & Conditions.** The Contractor agrees to comply with the Terms and Conditions.
- 8. **Contract Documents.** The Contract Documents include only the following documents, as indicated:

- | | | | |
|-------------|--|-------------|---|
| N/A | Notice to Proceed | N/A | Lead-Product(s) Certification |
| <u> </u> | Terms and Conditions to Contract | <u> </u> | Roofing Contract Financial Interest Certification |
| N/A | Noncollusion Declaration | <u> </u> | Insurance Certificates and Endorsements |
| N/A | Prevailing Wage Certification | N/A | Performance Bond |
| N/A | Workers' Compensation Certification | N/A | Payment Bond |
| N/A | Criminal Background Investigation Certification | <u> </u> | Exhibit "A" ("Scope of Work") |
| N/A | Asbestos & Other Hazardous Materials Certification | N/A | Plans |
| | | N/A | Work Specifications |
| | | <u> </u> | <u> </u> [Other] |

- 9. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service addressed as follows:

San Mateo-Foster City School District

Consulting: GLUMAC, Inc.

 Tel: 650.312.7884 ; Fax: _____
 E-Mail: msherrill@smfc.k12.ca.us _____
 ATTN: Mark Sherrill _____

 Tel: 408-720-8904; Fax: _____
 E-mail: cmiller@glumac.com _____
 ATTN: Chris Miller _____

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service.

ACCEPTED AND AGREED on the date indicated below. By signing this Contract, Contractor certifies, under penalty of perjury, that all the information provided in the Contract Documents is true, complete, and correct:

Dated: _____, 20__ Dated: _____, 20__

San Mateo-Foster City School District

GLUMAC, Inc.

By: _____ By: _____

Print Name: Carolyn Chow _____ Print Name: Chris Miller _____

Print Title: Chief Business Official _____ Print Title: Regional Commissioning Manager _____

Information regarding Contractor:

- Type of Business Entity:
- Individual
- Sole Proprietorship
- Partnership
- Limited Partnership
- Corporation
- Limited Liability Company
- Other: _____

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

TERMS AND CONDITIONS TO CONTRACT

1. **EQUIPMENT AND LABOR:** The Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the Services, the Services to be performed at such times and places as directed by and subject to the approval of the authorized District representative indicated in the Work specifications attached hereto.
2. **TERMINATION:** If Contractor fails to perform the Services and Contractor's duties to the satisfaction of the District, or if Contractor fails to fulfill in a timely and professional manner Contractor's obligations under this Contract, or if Contractor violates any of the Terms or Provisions of this Contract, the District shall have the right to terminate this Contract effective immediately upon the District giving written notice thereof to the Contractor. District shall also have the right in its sole discretion to terminate the Contract for its own convenience. Termination shall have no effect upon any of the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of termination.
3. **SAFETY AND SECURITY:** Contractor is responsible for maintaining safety in the performance of this Contract. Contractor shall be responsible for complying with the District's the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
4. **CHANGE IN SCOPE OF WORK:** Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted by District unless such change, addition, or deletion is approved in advance and in writing by a valid change order executed by the District. Contractor specifically understands, acknowledges, and agrees that the District shall have the right to request any alterations, deviations, reductions, or additions to the Project or Work, and the cost thereof shall be added to or deducted from the amount of the Contract Price by fair and reasonable valuations. Contractor also agrees to provide the District with all information requested to substantiate the cost of any change order and to inform the District whether the Work will be done by the Contractor or a subcontractor. In addition to any other information requested, Contractor shall submit, prior to approval of any change order, its request for a time extension (if any), as well as all information necessary to substantiate Contractor's belief that such change will delay the completion of the Work. If Contractor fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension.
5. **WORKERS:** Contractor shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Contractor or a subcontractor whom the District may deem incompetent or unfit shall be dismissed from the Site and shall not again be employed at Site without written consent from the District.
6. **DRUG-FREE / SMOKE FREE POLICY:** No drugs, alcohol and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, consultants or contractors are to use drugs on these sites
7. **CORRECTION OF ERRORS:** Contractor shall perform, at its own cost and expense and without reimbursement from the District, any work necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care required herein.
8. **SUBSTITUTIONS:** No substitutions of material from those specified in the Work Specifications shall be made without the prior written approval of the District.
9. **CONTRACTOR SUPERVISION:** Contractor shall provide competent supervision of personnel employed on the job Site, use of equipment, and quality of workmanship,
10. **CLEAN UP:** Debris shall be removed from the Premises. The Site shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition.
11. **ACCESS TO WORK:** District representatives shall at all time have access to the Work wherever it is in preparation or in progress. Contractor shall provide safe and proper facilities for such access.
12. **PROTECTION OF WORK AND PROPERTY:** Contractor shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, Contractor, without special instruction or authorization from District, is permitted to act at his discretion to prevent such threatened loss or injury.
13. **ASSIGNMENT OF CONTRACT:** Contractor shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this Contract without the prior written consent of the District.
14. **TIME IS OF THE ESSENCE:** Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Contract.
15. **OCCUPANCY:** District reserves the right to occupy buildings at any time before formal Contract completion and such occupancy shall not constitute final acceptance or approval of any part of the Work covered by this Contract, nor shall such occupancy extend the date specified for completion of the Work.
16. **FORCE MAJEURE CLAUSE:** Contractor shall be excused from performance hereunder during the time and to the extent that it is prevented from obtaining delivery, or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, product, plant, or facilities by the government, when satisfactory evidence thereof is presented to the District, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of Contractor.
17. **INDEMNIFICATION / HOLD HARMLESS CLAUSE:** To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold harmless the District, their agents, representatives, officers, consultants, employees, and volunteers (the "indemnified parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising from personal or bodily injuries, death, property damage, or otherwise arising out of, connected with, or resulting from the performance of this Contract unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the District.
18. **PAYMENT:** On a monthly basis, Contractor shall submit an application for payment based upon the estimated value for materials delivered or services performed under the Contract as of the date of submission ("Application for Payment"). Within thirty (30) days after District's approval of the Application for Payment, Contractor shall be paid a sum equal to ninety percent (90%) of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate

of previous payments and amount to be withheld. The District may deduct from any payment an amount necessary to protect the District from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the District in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract price or by the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of the Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by District during the prosecution of the Work; (9) erroneous or false estimates by the Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages, as determined by the District, incurred by the District for which Contractor is liable under the Contract; and (11) any other sums which the District is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including section 1727 of the California Labor Code. The failure by the District to deduct any of these sums from a progress payment shall not constitute a waiver of the District's right to such sums. The District shall retain five percent (5%) from all amounts owing as retention. Retention shall be paid pursuant to Public Contract Code sections 7107 and 7200.

19. PERMITS AND LICENSES: Contractor and all of its employees, agents, and subcontractors shall secure and maintain in force, at Contractor's sole cost and expense, all licenses and permits as are required by law, in connection with the furnishing of materials, supplies, or Services herein listed.

20. INDEPENDENT CONTRACTOR STATUS: While engaged in carrying out the Services of this Contract, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District. Contractor shall be solely responsible for its own Worker's Compensation insurance, taxes, and other similar charges or obligations. Contractor shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.

21. ANTI-DISCRIMINATION: It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, or religious creed, and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment Practice Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).

22. DISABLED VETERAN BUSINESS ENTERPRISES: Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building (SFP Funds) to have a participation of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). If this Contract uses School Facilities Program Funds, Contractor must submit, with its executed Contract, appropriate documentation to the District identifying the steps Contractor has taken to solicit DVBE participation in conjunction with this Contract.

23. WARRANTY/QUALITY: Unless a longer warranty is called for elsewhere in the Contract, Contractor, manufacturer, or their assigned agents shall guarantee the workmanship, product or Services performed against defective workmanship, defects or failures of materials for a minimum period of one (1) year from District's written

approval of the Work. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards.

24. CONFIDENTIALITY: Contractor shall maintain the confidentiality of all information, documents, programs, procedures, and all other items that Contractor encounters while performing the Contractor's Services to the extent allowed by law. This requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes all student, parent, and disciplinary information.

25. COMPLIANCE WITH LAWS: Contractor shall give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.

26. DISPUTES/CLAIMS: Public Contract Code § 9204. Claims between the District and the Contractor shall be resolved in accordance with the procedures established in Public Contract Code § 9204.

Claim. The term "Claim" means a written demand by the Contractor sent by registered mail or certified mail with return receipt requested for:

- (1) An extension of the Contract Time, including relief from damages or penalties assessed by the District for delay;
- (2) Payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment that is not otherwise expressly provided for in the Contract Documents or to which the Contractor is not otherwise entitled; or
- (3) Payment of an amount that is disputed by the District.

Submission of Claim. A Claim arises upon the District's rejection of a request by the Contractor for a Change Order. The Contractor shall submit the Claim by registered mail or certified mail with return receipt requested to the District's Director of construction and Modernization, with a copy to the Project Manager/Construction Manager. The Contractor shall submit its Claim in writing, together with all Supporting Documentation no later than the earlier of either: (1) thirty (30) days after the date the Claim arises; or (2) sixty (60) days after the date of Completion. It is the intent of the District to evaluate and resolve Claims with the Contractor as close to the events giving rise to such Claims as possible and to avoid stale or late Claims, including late notice and documenting of Claims, and to timely mitigate the issue, event, condition, circumstance and/or cause of the Claim and any adverse impacts or damages related thereto. Should the Contractor fail to submit a Claim by the deadline set forth in this Article, Contractor waives and releases such Claim, including all rights and remedies in connection therewith.

Contents of Claim. A Claim must include all Supporting Documentation and a statement identifying it as a Claim signed by an authorized agent or officer of the Contractor under penalty of perjury and including the following language immediately above or before the Contractor's signature: "I

declare under penalty of perjury under the laws of the State of California that the information provided and statements made in this Claim are true and correct, substantiated and of merit.” The Contractor recognizes and acknowledges that this requirement is not a mere formality but is intended to ensure that the Contractor only submits Claims that it believes are true and correct, substantiated and have merit. Should Contractor fail to submit the foregoing written statement signed under penalty of perjury, Contractor waives and releases its Claim, including all rights and remedies in connection thereto.

Subcontractor Claims. Pursuant to Public Contract Code § 9204(d)(5), a Subcontractor may request in writing, either on its own behalf or on behalf of a lower tier Subcontractor, that the Contractor submit to the District a claim for work which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the claim be submitted to the District shall furnish reasonable documentation to support the claim. Regardless of whether or not the Contractor decides to submit the Subcontractor’s claim to the District, Contractor shall provide a copy of the Subcontractor’s written request, including all supporting documentation, to the Project Manager/Construction Manager within ten (10) days of Contractor’s receipt of the request. In the event the Contractor agrees to submit a Subcontractor’s claim to the District, the Contractor shall submit such claim as a request for a Change Order, unless such claim was previously submitted to the District as a request for a Change Order. Within forty-five (45) days of receipt of the Subcontractor’s written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor submitted the claim to the District and, if the Contractor did not submit the claim, the Contractor shall provide the Subcontractor with a written statement of the reasons for not having done so and shall concurrently provide a copy of such written statement to the Project Manager/Construction Manager. In the event the Contractor includes supporting documentation with such written statement, the Contractor shall concurrently provide a copy of such supporting documentation to the Project Manager/Construction Manager. If the Contractor submits a Claim on behalf of a Subcontractor, the Claim shall include a statement in writing and signed by an authorized agent or officer of the Contractor under penalty of perjury that includes the following language immediately above or before the Contractor’s signature: “I declare under penalty of perjury under the laws of the State of California that [insert name of Contractor] has thoroughly evaluated the claim of [insert name of Subcontractor] and determined that the information provided and statements made in the claim are true and correct, substantiated and of merit.”

District Review of Claim. Upon receipt of a Claim, the District shall review the Claim and, within a period not to exceed forty-five (45) days, shall provide Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the District and the Contractor may, by mutual written agreement, extend the forty-five (45) day time period. The District shall process and make payment of any undisputed portion of a Claim within sixty (60) days after the District issues its written statement. Failure by the District to provide a written statement in response to a Claim from the Contractor within the forty-five (45) day time period, or within an agreed upon extended time period, shall result in

the Claim being deemed rejected in its entirety. A Claim that is rejected by reason of the District’s failure to respond, or failure to timely respond, to the Claim shall not constitute an adverse finding regarding the merits of the Claim or the claimant’s responsibility or qualifications.

Meet and Confer Meeting. If the Contractor disputes the District’s written response, or if the District fails to respond within the time frame prescribed above, the Contractor, within fifteen (15) days of the District’s written response or, if the District fails to respond, within fifteen (15) days after the District’s response was due, may demand, in a writing sent to the District’s Superintendent by registered mail or certified mail, return receipt requested, with a copy to the District’s Director of Construction and Modernization, and Project Manager/Construction Manager, an informal conference to meet and confer for settlement of the issues in dispute. The District shall schedule a meet and confer conference within thirty (30) days of its receipt of the Contractor’s written demand.

Mediation. Within ten (10) business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the District shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the District issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation. The expenses and fees of the mediator and the administrative fees shall be divided among the parties equally. Each party shall pay its own legal fees, witness fees, and other expenses. The District and the Contractor shall mutually agree to a mediator within ten (10) business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. The foregoing notwithstanding, pursuant to Public Contract Code § 9204(f), the parties may mutually agree in writing to waive mediation.

Pending resolution of the dispute, Contractor agrees it will neither rescind the Contract nor stop the progress of the Work, but will allow determination by the court of the State of California, in the county in which the District’s administration office is located, having competent jurisdiction of the dispute.

Nothing in this Article shall prevent the Parties from resolving any disputes or claims pursuant to Public Contract Code section 20104, et seq., if applicable.

Nothing in this Contract, waives, modifies or tolls the Contractor’s obligation to present a timely claim under Government Code § 910, et seq. Therefore, in addition to complying with the contractual Claims procedures, the Contractor is required to present claims to the District pursuant to Government Code § 910, et seq.

27. **PAYROLL RECORDS:** Contractor and its subcontractor(s) shall keep

accurate certified payroll records of employees and make them available to the District immediately upon request.

28. **ANTI-TRUST CLAIM:** Contractor and its subcontractor(s) agree to assign to the District all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or a subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor, without further acknowledgment by the Parties.

29. **GOVERNING LAW:** This Contract shall be governed by and construed in accordance with the laws of the State of California with venue of any action in a in the county in which the District's administration office is located.

30. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED:** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.

31. **BINDING CONTRACT:** This Contract shall be binding upon the Parties hereto and upon their successors and assigns, and shall inure to the benefit of the Parties and their successors and assigns.

32. **DISTRICT WAIVER:** District's waiver of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.

33. **INVALID TERM:** If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.

34. **ENTIRE CONTRACT:** This Contract sets forth the entire Contract between the Parties hereto and fully supersedes any and all prior agreements, understanding, written or oral, between the Parties hereto pertaining to the subject matter thereof. This Contract may be modified only by a writing evidencing the Parties' mutual consent.

GLUMAC

engineers for a sustainable future™

Exhibit "A"

Abbott Middle School
Commissioning Fee Proposal

January 17, 2018

Glumac Proposal No. 07.18.P061

January 4, 2018

Mark Sherrill
Project Manager
San Mateo – Foster City Unified School District
1170 Chess Drive
San Mateo, CA 94402
Email: msherrill@smfc.k12.ca.us



Subject: Title 24 Commissioning Services Proposal
Abbott Middle School - New Gymnasium, Classroom/Locker Room &
Modernization Project

Dear Bridgette:

Glumac is pleased to submit the enclosed fee proposal to provide commissioning services related to the Abbott Middle School. When selected, Glumac will act as the Commissioning Authority for the project, work closely with the entire project team to meet or exceed expectations set in the scope of work, and produce deliverables that meet your required budget and timeframe.

Our firm's long-standing commitment to sustainability and extensive experience with commissioning differentiates us in the industry. Our Commissioning Services span a wide range of building sizes and types and makes us well-qualified to provide commissioning services on this project. In addition:

- **You're Covered:** Over 300 commissioning, energy, and design staff firm-wide
- **Efficiency:** Cloud based (paperless) commissioning tools
- **Broader Spectrum:** Thermal imaging for commissioning performance testing
- **Scope –** Electrical and low voltage systems commissioning capabilities
- **Glumac 1:** Aerial photography and thermal imaging services
- **Ongoing Commissioning:** Automated commissioning platforms

Glumac understands the project will be designed and constructed under the California Title 24 Commissioning requirements and has developed the following scope of work to satisfy those requirements.

Glumac appreciates the opportunity to offer our services to the San Mateo Foster City School District. We welcome any questions you have regarding this proposal and can provide clarifications or further information at your request. We look forward to the opportunity of working with your team on this project.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Miller'.

Chris Miller, LEED AP BD+C
Regional Commissioning Manager
GLUMAC

FEE PROPOSAL

ABBOTT MIDDLE SCHOOL

PROJECT DESCRIPTION

Glumac understands this project to include the construction of two new buildings and the modernization of an existing building on an existing middle school campus. The first building will be new 28,500 square foot gymnasium with storage and restroom areas. The second building will approximately 14,500 square feet and will include space for classrooms and include the locker room facilities. The project is located on the existing school campus located at 600 36th Ave in San Mateo, California. This scope of work is based on the drawings provided dated October 27th, 2017.

PROPOSED SCOPE OF COMMISSIONING SERVICES

Glumac will act as the Commissioning Authority (CxA) and will oversee and participate in the commissioning process to assist in ensuring that the building's commissioned systems are complete, fully functional and perform in accordance with the project requirements and design intent.

The project will be designed and constructed under the California Title 24 Commissioning requirements and we have developed the following scope of work to satisfy those requirements.

Our approach is based on the LEED v4 Reference Guide, the California Energy Code, the California Green Building Code, the Federal General Services Administration Model Commissioning Plan and Guide Specification (Version 2.05) and the ASHRAE document, *The HVAC Commissioning Process, ASHRAE Guideline 0-2005*, as well as Glumac Commissioning Best Practices.

CALIFORNIA TITLE-24 BUILDING SYSTEMS COMMISSIONING

Per 2016 California Energy Code Part 6, Title 24 requirements, Glumac will coordinate, lead, review, and oversee the completion of the following commissioning process activities:

A. The Owner's Project Requirements Documentation

1. The Owner's Project Requirements (OPR) documents the functional requirements of a project and expectations of the building use and operation as it relates to systems being commissioned. The document describes the physical and functional building characteristics desired by the Owner and establishes performance and acceptance criteria. The OPR is most effective when developed during pre-design and used to develop the Basis of Design during the design process. The level of detail and complexity of the OPR will vary according to building use, type and systems. The Owner will document their OPR and both the Owner and the design team shall make updates to

these documents during design and construction. There is no required format for the OPR but the document should include the following sections:

- a. Project program;
 - b. Environmental and sustainability goals;
 - c. Energy efficiency goals;
 - d. Indoor environmental quality requirements;
 - e. Equipment and system expectations;
2. To facilitate the OPR development, Glumac will provide support to the Owner by providing a template or a sample OPR and ensure that the OPR satisfies Title 24 requirements.

B. The Basis of Design Documentation

1. The Basis of Design (BOD) describes the building systems to be commissioned and outlines design assumptions not indicated in the design documents. The design team develops the BOD to describe how the building systems design meets the OPR and why the systems were selected. The BOD is most effective when developed early in the project design and updated as necessary throughout the design process. At a minimum, the BOD shall include the following sections:
 - a. HVAC systems and controls;
 - b. Indoor lighting system;
 - c. Water heating system;
 - d. Renewable energy systems (if any);
 - e. Landscape irrigation systems;
 - f. Water reuse systems (if any);
 - g. Building occupant and Operation and Maintenance (O&M) personnel expectations.
 - h. Governing Codes and Standards.
2. As the CxA, Glumac shall review the BOD for clarity and completeness and verify that the BOD satisfies the OPR and meets the Title 24 requirements.

C. Commissioning Measures / Specifications

1. Commissioning measures that are to be included in the construction documents, plans and specifications requires the outline of commissioning requirements, documentation, and responsibilities. Glumac will develop and incorporate commissioning specification requirements into the construction documents specifications.

D. The Commissioning Plan

1. The Commissioning Plan (Cx Plan) establishes the commissioning process guideline for the project and commissioning team's level of effort by identifying the required Cx activities to verify that the OPR and BOD are met. The Cx Plan also includes a commissioning schedule from design to occupancy. Glumac will develop and utilize a Cx Plan that will be updated and used throughout the commissioning process. Glumac will complete accompanying Title 24 Compliance form where requested by City. The Cx Plan shall include at a minimum:
 - a. General project information;
 - b. Commissioning goals;
 - c. Systems to be commissioned;
 - d. Commissioning team information;
 - e. Commissioning process activities, schedules, and responsibilities.

E. Glumac understands that this project falls between the 10,000-square-foot and 50,000-square-foot thresholds and therefore proposes to act as the Design Reviewer for the project. Under this scope of work, Glumac will perform the following tasks:

1. During the Schematic Design Phase, Glumac will facilitate the Design Review Kickoff meeting between commissioning reviewer, the Owner's representative, design engineer(s), and the project manager to discuss project scope, schedule and the process for team coordination. Glumac will complete and sign the Commissioning Design Review Kickoff form NRCC-CRX-01-E.
2. Glumac, acting as the Design Reviewer, will review the Construction Documents in accordance with Title 24 requirements. Completion of the Required Certificates of Compliance Documentation, forms NRCC-CRX-02E through 05-E will be facilitated by Glumac.
3. Glumac to provide design review comments to design team for incorporation into the construction drawings. Glumac will backcheck all comments to ensure comments were captured on subsequent drawing revision.

F. Commissioning Process Administration

1. To ensure that the equipment and systems are installed and operating correctly and satisfy the OPR and BOD, Glumac will:
 - a. Conduct a Commissioning Kickoff Meeting early on with the Design Team where Glumac will review the Commissioning Process and the roles and responsibilities of the team members. An additional Commissioning Kickoff meeting will be conducted at the start of the construction phase of the project to review the Commissioning Process with the Construction Team.
 - b. Review the contractor submittals relative to the systems being commissioned to familiarize ourselves with the equipment and systems on the project.
 - c. Develop and utilize a Commissioning Issues and Benefits Log to be used throughout the commissioning process.
 - d. Glumac will collaborate with the construction team to develop Pre-functional Checklists for the equipment outlined in the Cx Plan. The checklists will be used to verify that the equipment is onsite, properly installed and ready for startup.
 - e. Conduct Commissioning Meetings as coordinated with the project team to review commissioning tasks, issue tracking, project documentation, quality, and project milestones. Based on the information provided, we are anticipating up to **(24)** meetings via teleconference and up to **(10)** meetings in person. Meetings will include project kick-off meeting, construction kick-off meeting, controls integration meeting, monthly/weekly MEP coordination meetings and commissioning progress meetings.
 - f. Conduct Commissioning Site Observations at key phases of the project as deemed necessary by the CxA. Construction progress and installation will be reviewed and a Site Observation Report submitted after each visit. Based on the current schedule, we are anticipating up to **(10)** site observations as scheduled in conjunction with onsite meetings. Site visits will be conducted to coincide with the following activities:

1. Installation of Mechanical Systems (1 to 2)	5. Plumbing & Irrigation Startup Observation (1)
2. Equipment Startup Activities (1)	6. Electrical Systems (Lighting) Startup (1)
3. Controls Programming/Calibration (1)	7. Owner Training (1 to 2)
4. Test & Balancing Verification (1)	8. Commissioning Issues Backcheck (2 to 3)

- g. Glumac will review **contractor provided and completed** "Acceptance Test" Start-up Checklists forms confirming that individual components of a system are installed properly per California Title 24 prior to the initiation of functional testing.

G. Functional Testing

1. Functional Performance Tests (FPT) demonstrates the correct installation and operation of each component, system and system to system interface.
 - a. Glumac will develop the FPT Procedures for the equipment and systems to be commissioned as outlined in the Cx Plan. These test procedures will provide direction and clear order to the testing process as well as define system pass/fail criteria.
 - b. The FPT's will be carried out by the installing contractors with Glumac witnessing and documenting the results.
 - c. Glumac will evaluate the Functional Test Results to ensure that the commissioned systems are functioning in accordance with the OPR and BOD.

H. Systems Manual

1. The Systems Manual documents the information on the operation of the building systems. It is needed to understand, operate and maintain the equipment and systems. The Systems Manual is in addition to the Operation and Maintenance (O&M) Manuals supplied by the contractor. The Manual is assembled during the construction phase and used in the training of the operations staff. The Systems Manual will include but not be limited to the following:
 - a. Overview;
 - 1) Introduction,
 - 2) Site Information,
 - 3) Facility Description.
 - b. Basic Operations;
 - 1) Operational Summary,
 - 2) Basic Operations.
 - c. Project History;
 - 1) Final Version of the OPR and BOD,
 - 2) Single Line Diagrams,
 - 3) Specifications,
 - 4) Current Requirements,
 - 5) Building Operating Schedules,
 - 6) As-Built Sequence of Operations and set points,
 - 7) Operating instructions for integrated building systems.
 - d. Re-Commissioning Forms;
 - e. Site Equipment inventory and maintenance notes.

I. Verification of Training

1. Systems Operations Training verifies that a training program is developed and provided to the appropriate maintenance staff for the equipment and systems commissioned on the project. The training requirements are specified in the project Specifications. Glumac will administer the training program by performing the following activities:
 - a. Review the goals and objectives of each training session;
 - b. Review training agendas, topics and length of instruction;
 - c. Review instructor information and qualifications;

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- d. Review the training location;
- e. Review attendance forms;
- f. Review training materials;
- g. Review how training will be archived for future use.

J. Commissioning Report

1. The Commissioning Report (Cx Report) documents the commissioning process and test results. At a minimum, the Cx Report will include:
 - a. An Executive Summary with results of the Commissioning Process including observations, conclusions and any outstanding items;
 - b. A Commissioning Issue Log identifying deficiencies discovered during the commissioning process, how they were resolved and any seasonal testing scheduled for a later date;
 - c. System performance test results including the Pre-Functional Checklists and Functional Test Results;
 - d. A summary of the Training Process;
 - e. Commissioning Process Documents;
 - f. The Final Cx Plan;
 - g. Owner's Project Requirements;
 - h. Basis of Design;
 - i. Executed Installation Checklists;
 - j. Execute Functional Performance Tests;
 - k. Recommendations for end-of-warranty review activities.

EQUIPMENT AND SYSTEMS TO BE COMMISSIONED

The following is the preliminary list of equipment and systems that are proposed to be commissioned under this project:

- A. Heating, ventilation, and air conditioning (HVAC) systems;
- B. Associated HVAC controls / automation systems;
- C. Lighting and daylight harvesting controls;
- D. Domestic hot water systems;
- E. Landscape irrigations controls;

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ASSUMPTIONS

The following assumptions are made in the preparations of this proposal:

- A. Our scope and fees are based on January/2020 substantial completion date.
- B. There is time available in the Pre-Construction schedule to allow for incorporation of the Commissioning Specification into the Construction Specification.
- C. The Owner/Architect will provide the Owners Project Requirements (OPR) and Basis of Design (BOD) documents for our work.
- D. The Owner/Architect will provide the design documents (drawings and specifications) for our work.
- E. The Owner/Architects will provide the contractors' submittal documents, test and balancing data, and other required documents.
- F. We include the use of digital photography within our documentation and will require notification if this practice is not acceptable.
- G. We anticipate that the work will be performed during normal business hours between 7:00 AM and 6:00 PM. Alternate schedules may require an additional fee.
- H. Glumac agrees to put forth its professional efforts to perform its services in a manner consistent with the agreed upon schedule. However, the Client understands that Glumac's performance must be governed by sound engineering practices. Additionally, Glumac is not responsible for delays in Client planning or construction schedules, failure of Client to furnish timely information or documents, or to approve or disapprove Glumac work promptly by reason of delay or faulty performance by Client, other contractors, or governmental agencies, or any other causes beyond Glumac's reasonable control.
- I. Glumac will not provide the "Acceptance Testing Forms" (Envelope, Mechanical, Plumbing, Process and Electrical). The installing contractor shall provide (complete and sign) all required "Acceptance Testing Forms" per 2016 California Title-24 Energy Code.
- J. We allot one (1) retest per system for failure. Additional may result in additional time onsite and associated fees per Glumac's standard hourly rates.
- K. Sampling, where there are multiple pieces (25 or more) of equipment of the same type such as VAV Terminal Units, Fan Coils, Exhaust Fans, etc. 10% sample testing may be performed. Of the 10% sample, for every failed test, another will be added.
- L. Seasonal testing and performance evaluation of systems operations may be required due to time of year project completion.

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- M. The equipment and systems commissioned under this scope of work is limited to those mentioned above. If additional equipment and systems are to be commissioned, additional service fees will apply.
- N. Our proposal includes One Commissioning Review of the equipment Submittals. If multiple submittals are submitted and additional reviews are needed that result in additional review time, there may be associated fees incurred per Glumac's standard hourly rates.

PROFESSIONAL FEES

You will be invoiced monthly as a percentage of completion against the following fixed fees:

COMMISSIONING SERVICES	FEE
Title 24 Commissioning	\$21,550
TOTAL FEE	\$21,550

REIMBURSABLE EXPENSES

In addition to the above fee, you will be invoiced for reimbursable expenses plus a 10% reimbursable mark-up fee. Reimbursable expenses include air travel, mileage, rental car, lodging and per diem, CAD plots (at our blueprint service provider's rates), printing (at FedEx Office rates) and messenger service.

TERMS AND CONDITIONS

The following Terms and Conditions will govern all services performed on behalf of Client and are hereby incorporated into the Commissioning Services Fee Proposal.

1. **Commissioning Services.** Commissioning plans, specifications and reports represent Glumac, Inc.'s ("Glumac") judgment as a design professional with respect to the proper commissioning of equipment and components of the work. It is recognized, however, that Glumac does not have control over contractor's proper performance of the work, including but not limited to the contractor's means, methods, techniques, sequences and procedures of construction. Accordingly, Glumac cannot and does not warrant or represent that commissioned equipment and components of the work will not vary from the requirements of the contract documents or comply with applicable codes. Glumac does not perform any work of a contractor and its Commissioning Services are limited to design, plans, and oversight only. No withholding, deductions or offsets shall be made from Glumac's compensation for any reason unless Glumac has been found to be legally liable for such amounts. Payment of Glumac's fees shall be a condition precedent to bringing any action or suit against Glumac.
2. **Operation and Maintenance.** Client acknowledges that the proper performance of equipment and components commissioned under this Agreement requires periodic and regular maintenance and testing. Client agrees to retain and train qualified personnel regarding the proper operation, maintenance and testing of equipment and components commissioned by Glumac. Client further agrees that, after commissioning, it will maintain the equipment and components commissioned by Glumac in accordance with manufacturer's instructions and industry practice.
3. **Payment.** All fees and other charges will be billed to Client monthly and will be due and payable no later than 30 days after the date of invoice. Client will pay Glumac interest on past due amounts at the rate of 1.5 percent per month or the highest amount permitted by law, whichever is greater. In addition to all other remedies, Glumac may withhold delivery of services, reports, plans, specifications, documents or other deliverables if Client fails to pay an invoice when due. Payment to Glumac will not be withheld, postponed or made contingent on the construction, completion or success of the project or upon receipt by the Client of project funds, offsetting reimbursements, or credits from other parties.