

AGREEMENT FOR PROGRAM MANAGEMENT SERVICES

SAN RAFAEL CITY SCHOOLS

AND

VAN PELT CONSTRUCTION SERVICES

June 14, 2016

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AGREEMENT FOR PROGRAM MANAGEMENT SERVICES

This Agreement for Program Management Services ("Agreement") is made as of the fourteenth day of June in the year 2016, between the San Rafael City Schools, including the San Rafael Elementary School District and the San Rafael High School District, each of which is a California public school district ("District"), and Van Pelt Construction Services ("Program Manager") (both collectively "Parties"), for the administration of the District's Measure A and Measure B Bond Program ("Program"), including oversight and coordination of the projects comprising the Program ("Projects" or "Project").

The Program may have multiple components. Any one of the components or combination thereof may be changed, including terminated, in the same manner as the Projects or the Program, as indicated herein, without changing in any way the remaining component(s). The provisions of this Agreement shall apply to each component without regard to the status of the remaining component(s).

For and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

Article 1. Definitions

- 1.1. In addition to the definitions above, the following definitions for words or phrases shall apply when used in this Agreement, including all Exhibits:
 - 1.1.1. **Agreement**: The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
 - 1.1.2. **Architect**: The architect(s) that the District designates as being the architect(s) for all or a portion of the Program, including all consultants to the Architect(s).
 - 1.1.3. **As-Built Drawings**: Any document prepared and submitted by Contractor(s) that details, on a Conforming Set, the actual construction performed during the Project(s), including changes necessitated by Construction Change Documents and change orders and detailed by Contractor(s) on a Conforming Set.
 - 1.1.4. **Board**: The District's Governing Board.
 - 1.1.5. **CMU**: The Compliance Monitoring Unit ("CMU") of the California Department of Industrial Relations.
 - 1.1.6. **Conforming Set**: The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase.
 - 1.1.7. **Construction Budget**: The total amount indicated by the District for each Project plus all other costs, including design, construction, administration, financing, and all other costs for that Project.
 - 1.1.8. **Construction Change Documents ("CCD")**: The documentation of changes to the DSA-approved construction documents.

- 1.1.9. **Construction Cost Budget**: The total cost to District of all elements of each Project designed or specified by the Architect, as adjusted at the end of each design phase in accordance with the Architect's Agreement with the District. The Construction Cost Budget does not include the compensation of the Program Manager, the Project design professional(s), subconsultants, the cost of the land, rights-of-way, or financing which are the responsibility of the District.
- 1.1.10. **Construction Documents**: The written and graphic documents prepared for communicating the Project(s) design for construction and administration of the construction contract(s). The Construction Documents include, but are not limited to, the drawings, specifications, contracting requirements, procurement requirements, modifications and addenda, and resource drawing.
- 1.1.11. **Construction Manager**: Any construction manager hired to perform construction or project management services under the supervision of the Program Manager, including all consultant(s) to the Construction Manager.
- 1.1.12. **Consultant(s)**: Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Program Manager.
- 1.1.13. **Contractor**: One or more licensed contractors under contract with the District for construction of all or a portion of each Project.
- 1.1.14. **Design Team**: The Architect(s) that the District designates as being the architect(s) for all or a portion of the Program, including all consultants to the Architect(s), plus all engineer(s) or other designer(s), who have a responsibility to the District to design all or a portion of the Program either directly or as a subconsultant or subcontractor.
- 1.1.15. **District Representative**: The individual identified herein that is authorized to act on the District's behalf with respect to the Program. The initial District Representative shall be the Chief Business Official. District may change the District's Representative by notice as set forth herein.
- 1.1.16. **DSA**: The Division of the State Architect in the California Department of General Services.
- 1.1.17. **Extra Services**: District-authorized Services outside of the scope in **Exhibit "A"** or District-authorized reimbursables not included in the Program Manager's Fee.
- 1.1.18. **Fee**: The Program Manager's Fee is defined in Section 7.1, payable as set forth in Article 7 and **Exhibit "D."**
- 1.1.19. **Project Inspector, Inspector of Record, IOR**: The agent of the DSA at the project site whose primary responsibility will be to insure that the project is constructed in compliance with current codes; DSA-approved plans and specifications relating to fire life safety,

structure, and accessibility; and quality controls required of a public works facility. The IOR will report to both the DSA and the Architect.

- 1.1.20. **Program Budget:** The total amount available for all costs related to the Program including, but not limited to, Program design, Program administration, Program financing, the services pursuant to this Agreement, and the construction of the Program. The Program Budget is the sum of all the Construction Budgets for each Project and all other Program expenses. The Program Budget is derived from the funds designated by the District for the Program, and the Program Manager shall ensure that no additional funds are necessary for the Program. The Board may, at its sole discretion, determine to expand the Program Budget based on receipt of additional funding.
- 1.1.21. **Service(s):** All labor, materials, supervision, services, tasks, and work that the Program Manager is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of each Project and the management and coordination of the Program.
- 1.1.22. **State Labor Compliance:** The State program that applies to projects awarded on or after January 1, 2012 and funded at least in part with State bond funds other than Proposition 84 that includes monitoring and enforcement by the CMU of the Department of Industrial Relations to verify that the Construction Manager, Contractor, all subconsultants and all subcontractors pay prevailing wages to all workers on the Project.

Article 2. Term

- 2.1. **Term:** This Agreement shall become effective on June 14, 2016 and, except as otherwise provided herein, will continue in effect until June 13, 2021.
- 2.2. **Option to Renegotiate:** During the five year term of this Agreement, District shall have the option to renegotiate Program Manager's staffing, scope, and fee on an annual basis. The first option to renegotiate vests on or about June 13, 2017.

Article 3. Scope, Responsibilities And Services Of Program Manager

- 3.1. **Scope:** Program Manager shall provide the Services described herein and under **Exhibit "A"** for the Program. The parties agree that the Program Manager's Services described herein shall not include a construction manager / general contractor structure on the Projects. The District will utilize a separate construction manager, lease leaseback structure, or other delivery method for any or all Projects.
- 3.2. Program Manager's Services shall include, but not be limited to:
 - 3.2.1. Providing the District with budget recommendations, based on documented estimates, for the Projects. The Board shall make the final decisions as to all budgets.

- 3.2.2. Providing the District with recommendations for all pre-design and preconstruction testing and analysis necessary, in Program Manager's opinion, to ensure that the Program is completed within the Program Budget.
- 3.3. Review of General Obligation Bond Program Report and Long Range Facilities Plan: Program Manager shall review the General Obligation Bond Program Report, Master Facilities Plan ("MFP"), and Master Facilities Bond Implementation Plan ("MFBIP") for the District and other written materials made available by the District to Program Manager to fully understand the nature, extent and intent of the General Obligation Bond Program Report and the MFP, MFBIP, and the Projects.
- 3.4. Review of Measures A and B: Program Manager shall review Measures A and B ("Measures"), including the Bond Project List, and other written materials made available by the District to Program Manager which relate to the Measures to fully understand the extent of funding available and Projects listed, to implement the General Obligation Bond Program for the District, the anticipated schedule for issuance of Bonds under the Measures relative to the anticipated design, bidding and construction of projects.
- 3.5. Coordination: In the performance of Program Manager's services under this Agreement, Program Manager agrees that it will maintain such coordination with District personnel and/or its designated representatives as may be requested and desirable. This shall include, without limitation, coordination with all members of the District's Design Teams, Construction Managers, and the representatives of the CMU, if any. If the Program Manager employs sub-consultant(s), the Program Manager shall ensure that its contract(s) with its sub-consultant(s) include language notifying the sub-consultant(s) of the obligation to comply with State Labor Compliance, if any.
- 3.6. Program Manager's Services: Program Manager shall act as the District's agent to render the services and furnish the work as described in **Exhibit "A,"** which will commence upon the receipt of a Notice to Proceed signed by the District Representative. Program Manager's services will be completed in accordance with the schedule attached as **Exhibit "C."**
- 3.7. Should the Board decide to expand the scope of the Program and/or supplement the Program Budget based upon availability of additional funds, Program Manager agrees to perform the additional scope of work under the fee and cost terms of this Agreement if the additional funding is equal to or less than Five Percent (5%) of Two Hundred Sixty-Eight Million Seven Hundred Twenty-Five Thousand Dollars (\$268,725,000) ("Program Total"). If the additional funding is greater than Five Percent (5%) of the Program Total, the Parties agree to negotiate an appropriate adjustment to the Program Manager's staffing, scope, and fee.
- 3.8. Conflicts of Interest Prohibited: The Program Manager shall not be permitted to submit proposals or otherwise seek contracts for the following services to be procured by the District in connection with any Project: Design Professional, Project Construction Management, Inspector of Record ("IOR") or Test/Inspection. If the Program Manager identifies potential Design Professionals, Project Construction Managers, Project Inspectors or Test/Inspection services in connection with a Project, the Program Manager

shall affirmatively and unequivocally represent and warrant to the District that neither the Program Manager nor any person who holds any equity interest in Program Manager's organization is a former or current holder of any equity interest in the firm identified and that neither the Program Manager nor any holder of any equity interest in the Program Manager's organization has any financial interest in the firm identified. The District reserves the sole discretion to waive this subsection's requirement on a case-by-case basis.

- 3.9. Program Manager shall coordinate with District personnel or its designated representatives as may be requested and desirable, including with other professionals employed by the District to ensure compliance for the design, coordination or management of other work related to the Program. This shall include, without limitation, coordination with State labor compliance, if any. If the Program Manager employs Consultant(s), the Program Manager shall ensure that its contract(s) with its Consultant(s) include language notifying the Consultant(s) of State labor compliance, if any.

Article 4. Program Manager Staff

- 4.1. The Program Manager has been selected to perform the work herein because of the skills and expertise of key individuals.
- 4.2. The Program Manager agrees that the following key people in Program Manager's firm or as Program Manager's subconsultant shall be associated with the Program in the following capacities:

Principal In Charge:	Mark Van Pelt
Regional Vice President:	Eric Van Pelt
Program Manager:	Peter Norgaard
Asst. Program Manager:	William Savidge
Design Manager:	Aaron Garrett
Budget and Accounting:	Mary Keegan
Schedule Consultant:	Donald Scarbrough

- 4.3. Changes in staffing and key personnel may be made with the advance written consent of the District, including those made pursuant to the optional annual renegotiation described in Section 2.2, above. The Program Manager shall not change any of the key personnel listed above without prior written approval by District, unless said personnel cease to be employed by Program Manager. Regardless of the reason for the change in key personnel, District shall be allowed to interview and approve replacement or additional personnel.
- 4.4. If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice by the District, the Program Manager shall immediately remove that person from the Program and provide a temporary replacement. Within seven (7) days of such removal, Program Manager shall provide a permanent replacement person acceptable to the District. All lead or key personnel for any Consultant must also be designated by the Consultant and are subject to all conditions previously stated in this paragraph.
- 4.5. Program Manager represents that the Program Manager has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of services required under this

Agreement and that no person having any such interest shall be employed by Program Manager.

Article 5. Schedule Of Work

The Program Manager shall commence work under this Agreement upon receipt of a Notice to Proceed and shall prosecute the work diligently as described in **Exhibit "A"** in accordance with the schedule attached as **Exhibit "C."** Time is of the essence and failure of Program Manager to perform work on time as specified in this Agreement is a material breach of this Agreement.

Article 6. Program Budget; Construction Cost Budgets

- 6.1. The Program Manager shall have responsibility to develop, review, and reconcile the Program Budget on the basis of each Project Construction Cost Budget with the Project Construction Manager, the Architect and the District throughout the design process and construction. Program Manager shall develop and present for Board Approval the Program Budget and each component thereof. Program Manager shall revise these until the Board accepts a final Program Budget and all the components thereof.
- 6.2. Program Manager shall specify all pre-design and pre-construction investigations and analyses necessary to prevent cost overruns, differing site conditions claims, other construction claims, design omissions, and budget overruns.
- 6.3. The Construction Cost Budget shall be the total cost to District of all elements of the Project designed or specified by the Project design professional(s). The Construction Cost Budget does not include the compensation of the Program Manager, the Project design professional(s), subconsultants, the cost of the land, rights-of-way, or financing which are the responsibility of the District.
- 6.4. Program Manager shall work cooperatively with the Project Design Team during the Schematic Design Phase, Design Development Phase, and Construction Documents Phase, as described in **Exhibit "A,"** so that the construction cost of the work designed by the Project Design Team will not exceed the Construction Cost Budget, as may be adjusted subsequently with the District's written approval. The Program Manager shall notify the District immediately if it believes the construction cost of a Project will exceed the Construction Cost Budget for that Project.
- 6.5. Evaluations of the District's Program Budget, and preliminary and detailed cost estimates prepared by the Program Manager, represent the Program Manager's best judgment as a professional familiar with the construction industry in the geographic area of the District.
- 6.6. If the Bidding Phase has not commenced within ninety (90) days after DSA approval, the Construction Cost Budget shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the District and the date on which proposals are sought.

- 6.7. Program Manager specifically acknowledges that the District is relying on Program Manager to monitor, review, verify, and revise the Program Budget at multiple instances throughout the Program.

Article 7. Fee And Method Of Payment

- 7.1. For all services contracted for under this Agreement, District shall pay Program Manager on a lump sum not to exceed fee basis in the amount of One Million One Hundred Six Thousand and Seven Hundred Dollars (\$1,106,700) for each full year of services provided under this Agreement, totaling a not to exceed amount of Five Million Five Hundred Thirty-Three Thousand and Five Hundred Dollars (\$5,533,500) for the full Term of this Agreement.
- 7.2. District shall pay Program Manager the Fee pursuant to the provisions herein and in **Exhibit "D."**
- 7.3. Program Manager's Fee shall be billed in equal installments on a monthly basis in accordance with **Exhibit "D."**
- 7.4. Program Manager's Fee may be adjusted pursuant to the optional annual renegotiation described in Section 2.2, above.
- 7.5. No increase in Fee will be due from change orders generated during the construction period of any Projects to the extent caused by Program Manager's error.
- 7.6. The Program Manager's Fee set forth in this Agreement shall be full compensation for all of Program Manager's Services incurred in the performance hereof as indicated in **Exhibit "D"**, including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Program Manager's Program Office, offices, per diem expenses, printing, and providing or shipping of deliverables in the quantities set forth in **Exhibit "A."**

Article 8. Payment for Extra Services

- 8.1. Any charges for Extra Services shall be paid by the District as described in **Exhibit "B"** at the rates set forth in **"Exhibit D"** only upon certification that the claimed Extra Services were authorized in writing in advance by the District and that the Extra Services have been satisfactorily completed.
- 8.2. A written proposal describing the proposed scope of services and listing the personnel, labor duration, rates, and cost shall be submitted by the Program Manager to the District for written approval before proceeding with any Extra Services.

Article 9. Ownership Of Data

- 9.1. All of the work product of Program Manager, prepared or generated, in connection with this Agreement is the property of the District.
- 9.2. Upon request by the District, the Program Manager shall make available to the District all work product completed or in progress at the time of such a request.

- 9.3. After completion of each project or, if the District exercises the right to terminate this Agreement pursuant to the terms hereof, after termination of this Agreement, Program Manager shall assemble and deliver to District all of the work product of the Program Manager generated, prepared, reviewed or compiled in connection with this Agreement and the Services and authorized Extra Services hereunder. This includes, without limitation, a complete set of Program and Project(s) records, including without limitation all documents generated by Program Manager, copies of all documents exchanged with or copied to or from all other Program and Project(s) participants, and all closeout documents. Said Program and Project(s) records shall be indexed and appropriately organized for easy use by District personnel.
- 9.4. All Program and Project(s) records are property of the District, whether or not those records are in the Program Manager's possession. District retains all right to copyrights, designs, and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that Program Manager or its Consultants prepare or cause to be prepared pursuant to this Agreement.

Article 10. Termination Of Contract

- 10.1. If Program Manager fails to perform Program Manager's duties to the satisfaction of the District, or if Program Manager fails to fulfill in a timely and professional manner Program Manager's material obligations under this Agreement, or if Program Manager shall violate any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement effective immediately upon the District giving written notice thereof to the Program Manager. In the event of a termination pursuant to this subdivision, Program Manager may invoice District for all work performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of Program Manager's actions, errors, or omissions.
- 10.2. District shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Program Manager may invoice District and District shall pay all undisputed invoice(s) for work performed until the notice of termination. This shall be the only amount(s) potentially owing to Program Manager if there is a termination for convenience.
- 10.3. The Program Manager has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement and fails to cure such material default within sixty (60) days, or if the default cannot be cured within sixty (60) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from Program Manager. Such termination shall be effective thirty (30) days after District's receipt of written notice from Program Manager.
- 10.4. Except as indicated in this Article, 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 such termination.

- 10.5. If, at any time in the progress of the Program, the District determines that the Program should be terminated, the Program Manager, upon written notice from the District of such termination, shall immediately cease work on the Program. The District shall pay the Program Manager only the fee associated with the services provided and approved by District since the last paid invoice and up to the notice of termination.
- 10.6. If the Program is suspended by the District for more than one hundred eighty (180) consecutive days, the Program Manager shall be compensated for services performed prior to notice of such suspension. When the Program is resumed, the schedule shall be adjusted and the Program Manager's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Program Manager's services. Upon resumption of the Program after suspension, the Program Manager shall make every effort to maintain the same Program personnel.

Article 11. Indemnity

- 11.1. To the furthest extent permitted by California law, Program Manager shall defend, indemnify and hold free and harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim") that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Program Manager, its officers, employees, subcontractors, consultants, or agents, including without limitation the payment of all consequential damages.
- 11.2. Program Manager shall pay and satisfy any judgment, award or decree that may be rendered against the Indemnified Parties in any Claim. Program Manager's obligation pursuant to Article 10.1 includes reimbursing the District for the cost of any settlement paid by the Indemnified Parties and for any and all fees and costs, including but not limited to legal fees and costs, expert witness fees, and consultant fees, incurred by the Indemnified Parties in defense of any Claim(s) and to enforce the indemnity herein. Program Manager's obligation to indemnify shall not be restricted to insurance proceeds. District shall also have the right to accept or reject any legal representation that Program Manager proposes to defend the Indemnified Parties.
- 11.3. District may withhold any and all costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Program Manager from amounts owing to Program Manager.

Article 12. Conduct on Project Sites and Fingerprinting

- 12.1. Unacceptable and/or loud language will not be tolerated. "Cat calls" or other derogatory language toward students or public will not be allowed.
- 12.2. Drugs, alcohol, and smoking on District property are strictly prohibited. No drugs, alcohol and/or smoking are allowed at any time in any building and/or grounds on District's property. No students, staff, visitors or contractors are to use drugs on District's property.

- 12.3. Unless the District has determined pursuant to Education Code section 45125.2 that on the basis of the scope of work in this Agreement that Program Manager and its subcontractors and employees will have only limited contact with pupils, the Program Manager shall comply with the provisions of Education Code section 45125.01 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Program Manager shall not permit any employee to have any contact with District pupils until such time as the Program Manager has verified in writing to the governing Board that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Program Manager's responsibility shall extend to all employees, agents, and employees or agents of its subcontracts regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Program Manager. Verification of compliance with this section and the Criminal Background Investigation Certification (Exhibit "E") shall be provided in writing to the District prior to each individual's commencement of employment or participation on the Program and prior to permitting contact with any student.

Article 13. Responsibilities of the District

- 13.1. The District shall examine the documents submitted by the Program Manager and shall render decisions so as to avoid unreasonable delay in the process of the Program Manager's services.
- 13.2. The District shall provide to the Program Manager as complete information as is available to District regarding the District's requirements for the Project.
- 13.3. The District shall retain design professional(s) whose services, duties and responsibilities shall be described in written agreement(s) between the District and design professional(s).
- 13.4. The District shall, in a timely manner, and with Program Manager's assistance, secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, subject to Program Manager's and/or the design professional(s) duties to recommend or provide same.
- 13.5. The District, its representatives, and consultants shall communicate with the Contractor(s) either directly or through the Program Manager or Construction Manager.
- 13.6. During the Construction Phase of the Project, the District may require that the Contractors submit all notices and communication relating to the Project directly to the Program Manager or Construction Manager.
- 13.7. The District shall designate an officer, employee and/or other authorized representatives to act on the District's behalf with respect to the Project. The District Representative for the Project shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

Article 14. Liability of District

- 14.1. Other than as provided in this Agreement, District's obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or for the services performed in connection with this Agreement.
- 14.2. Any and all costs incurred by District, or for which District may become liable, to the extent caused by intentional or negligent acts or omissions of Program Manager in its performance hereunder, shall be paid to District by Program Manager as provided for herein and/or under California law.
- 14.3. District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Program Manager, or by its employees, even though such equipment be furnished or loaned to Program Manager by District.
- 14.4. The Program Manager hereby waives any and all claim(s) for recovery from the District under this Agreement, which loss or damage is covered by valid and collectible insurance policies. Program Manager agrees to have its required insurance policies endorsed to prevent the invalidation of insurance coverage by reason of this waiver. This waiver shall extend to claims paid, or expenses incurred, by Program Manager's insurance company on behalf of the District.

Article 15. Insurance

- 15.1. Prior to commencement of the work of this Agreement Program Manager shall procure, and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Program Manager, its agents, representatives, employees and sub-consultant(s).
- 15.2. **Minimum Scope and Limits of Insurance:** Coverage shall be at least as broad as the following scopes and limits:
 - 15.2.1. **Commercial General Liability.** One million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each Project/location or the general aggregate limit shall be twice the required occurrence limit.
 - 15.2.2. **Commercial Automobile Liability, Any Auto.** One million dollars (\$1,000,000) per accident for bodily injury and property damage.
 - 15.2.3. **Workers' Compensation.** Statutory limits required by the State of California and

- 15.2.4. **Employer's Liability.** Two million dollars (\$2,000,000) per accident for bodily injury or disease.
- 15.2.5. **Professional Liability.** This insurance shall cover the Program Manager and his/her sub-consultant(s) for One million dollars (\$1,000,000) aggregate limit subject to no more than twenty-five thousand dollars (\$25,000) per claim deductible, coverage to continue through completion of construction plus two (2) years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.
- 15.3. The District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.
- 15.4. **Deductibles and Self-Insured Retention:** Any deductibles or self-insured retention exceeding twenty-five thousand dollars (\$25,000) must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers; or the Program Manager shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 15.5. **Other Insurance Provisions:** The insurance policies required above are to contain, or be endorsed to contain, the following provisions:
- 15.5.1. All policies except for the professional insurance policy shall be written on an occurrence form
- 15.5.2. The District, the Architect, their representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Program Manager; instruments of service and completed operations of the Program Manager; premises owned, occupied or used by the Program Manager; or automobiles owned, leased, hired or borrowed by the Program Manager. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.
- 15.5.3. For any claims related to this Program, the Program Manager's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Program Manager's insurance and shall not contribute with it.
- 15.5.4. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

- 15.5.5. The Program Manager's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 15.5.6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by Program Manager, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.
- 15.6. **Acceptability of Insurers:** Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A:VII.
- 15.7. **Verification of Coverage:** Program Manager shall furnish the District with:
 - 15.7.1. Certificates of insurance showing maintenance of the required insurance coverage;
 - 15.7.2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before work commences.

Article 16. Nondiscrimination

Program Manager agrees that no discrimination shall be made in the employment of persons under this Agreement because of the race, national origin, ancestry, religion, age, physical or mental disability, sex, sexual orientation or perceived sexual orientation, or gender identity of such person. Program Manager shall comply with any and all regulations and laws governing nondiscrimination in employment.

Article 17. Covenant Against Contingent Fees

Program Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Program Manager, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Program Manager, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the contract price or consideration or otherwise recover the full amount of such fee, commission, percentage fee, gift, or contingency.

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Article 18. Entire Agreement/Modification

This Agreement, including the Exhibits hereto, supersedes all previous contracts and constitutes the entire understanding of the Parties hereto. Program Manager shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both Parties. Program Manager specifically acknowledges that in entering this Agreement, Program Manager relies solely upon the provisions contained in this Agreement and no others.

Article 19. Non-Assignment Of Agreement

In as much as this Agreement is intended to secure the specialized services of the Program Manager, Program Manager may not assign, transfer, delegate or sublet any interest therein without the prior written consent of District and any such assignment, transfer, delegation or sublease without the District's prior written consent shall be considered null and void.

Article 20. Law, Venue

- 20.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.
- 20.2. The county in which the District administration office is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

Article 21. Alternative Dispute Resolution

- 21.1. Notwithstanding any disputes, claims or other disagreements between Program Manager and the District, Program Manager shall continue to provide and perform services hereunder pending a subsequent resolution of such disputes.
- 21.2. All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. If this method proves unsuccessful, then all claims, disputes or controversies as stated above may be decided through arbitration, if agreed to by all Parties.

Article 22. Severability

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

Article 23. Employment Status

- 23.1. Program Manager shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture

relationship, or to allow District to exercise discretion or control over the professional manner in which the Program Manager performs the Services which are the subject matter of this Agreement; provided always, however, that the Services to be provided by Program Manager shall be provided in a manner consistent with all applicable standards and regulations governing such Services.

- 23.2. Program Manager understands and agrees that the Program Manager's personnel are not and will not be eligible for: membership in or any benefits from any District group plan for hospital, surgical or medical insurance; membership in any District retirement program; paid vacation, paid sick leave or other leave, with or without pay; or any other benefits which accrue to a District employee.
- 23.3. Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Program Manager is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Program Manager which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 23.4. Should a relevant taxing authority determine a liability for past services performed by Program Manager for District, upon notification of such fact by District, Program Manager shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Program Manager under this Agreement (again, offsetting any amounts already paid by Program Manager which can be applied as a credit against such liability).
- 23.5. A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Program Manager shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Program Manager is an employee for any other purpose, then Program Manager agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Program Manager was not an employee.
- 23.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 24. Warranty of Program Manager

- 24.1. Program Manager warrants that the Program Manager is properly licensed and/or certified under the laws and regulations of the State of California to provide all the services that it has herein agreed to perform. Program Manager further warrants that all the work performed under this Agreement by the Program Manager shall comply with all applicable laws, rules, regulations and codes of the United States and the State of California. The Program Manager

also warrants that it shall comply with all applicable ordinances, regulations, and resolutions of the County in which the District is located.

- 24.2. Program Manager certifies that it is aware of the provisions of the Labor Code of the State of California, that require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that, if applicable, it will comply with those provisions before commencing the performance of the work of this Agreement.
- 24.3. Program Manager certifies that it is aware of the provisions of California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Since the Program Manager is performing work as part of an applicable "public works" or "maintenance" project, and since the total compensation is \$1,000 or more, the Program Manager agrees to fully comply with and to require its sub-consultant(s) to fully comply with all applicable prevailing wage requirements of the California Labor Code. District may participate in State labor compliance monitoring by CMU. If District participates in State labor compliance monitoring by the CMU, Program Manager shall cooperate with the DIR and provide certified payroll reports as required.

Article 25. Cost Disclosure - Documents And Written Reports

Program Manager shall be responsible for compliance with California Government Code section 7550, if the total cost of the Agreement is over five thousand dollars (\$5,000).

Article 26. Communications and Notices

Notices and communications between the Parties to this Agreement may be sent to the following addresses by registered or certified mail with postage prepaid, return receipt requested; by overnight delivery service; or by personal delivery:

If to District:

San Rafael City Schools
310 Nova Albion Way
San Rafael, CA 94903

Telephone: (415) 492-3257

Attn: Dr. Daniel Zaich, Director of
Strategic Initiatives

With a copy to:

DANNIS WOLIVER KELLEY
275 Battery Street, Suite 1150
San Francisco, CA 94111
Attention: Mark W. Kelley
Telephone: (415) 543-4111
Facsimile: (415) 543-4384

If to Program Manager:

Van Pelt Construction Services
5030 Business Center Drive, Suite 240
Fairfield, CA 94534

Telephone: (707) 438-3790

Attn: Mark Van Pelt, President

With a copy to:

Article 27. Disabled Veteran Business Enterprise Participation

Pursuant to section 17076.118 of the Education Code, the District has a participation goal for disabled veteran business enterprises ("DVBES" or "DVBE") of at least three (3) percent, per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the "Act"). This Program may use funds allocated under the Act. Therefore, to the extent feasible the Program Manager, before it executes the Agreement, shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBEs in conjunction with the contract, and/or documentation demonstrating the Program Manager's good faith efforts to meet these goals.

Article 28. Other Provisions

- 28.1. The Program Manager shall be responsible for the cost of construction change orders caused directly by the Program Manager's willful misconduct or negligent acts, errors or omissions. Without limiting Program Manager's liability for indirect or consequential cost impacts, the direct costs for which the Program Manager shall be liable shall equal its proportionate share of the difference between the cost of the change order and the reasonable cost of the work had such work been a part of the originally prepared construction documents.
- 28.2. Neither the District's review of, approval of, nor payment for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Program Manager shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Program Manager's failure to perform any of the Services furnished under this Agreement to the standard of care of the Program Manager for its Services, which shall be, at a minimum, the standard of care of Program Managers performing similar work for California public school districts at or around the same time and in or around the same geographic area of the District.
- 28.3. Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.
- 28.4. The individual executing this Agreement on behalf of the Program Manager warrants and represents that she/he is authorized to execute this Agreement and bind the Program Manager to all terms hereof.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date(s) indicated below.

SAN RAFAEL CITY SCHOOLS

Date: _____, 2016

By: _____

Title: Superintendent

VAN PELT CONSTRUCTION SERVICES

Date: JUNE 14TH, 2016

By: 

Title: PRESIDENT

EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF PROGRAM MANAGER

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EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF PROGRAM MANAGER

Program Manager shall provide professional services necessary for completing the following:

1. BASIC SERVICES

- 1.1. Provide work which shall comply with professional standards and applicable requirements of federal, state, and local law.
- 1.2. Monitor and advise the District as to all material developments in the Program. Maintain reporting systems for scope, sequencing, scheduling, budgets and communication for the Program using existing District software.
- 1.3. Be the focal point of all communication to and from construction Contractor(s).
- 1.4. Develop and implement methods to budget and track all expenditures on each Project. Program Manager shall generate monthly reports to the District reflecting this information.
- 1.5. Prepare methods to track and report on schedule status for each Project and for the overall Program. Program Manager shall develop master schedules and milestone schedules for each Project, and shall report on same each month to the District.
- 1.6. The Program Manager will be required to attend and provide updates at each Board meeting. The Program Manager shall work cooperatively with District to anticipate and maintain a schedule of upcoming Board information and action items and shall prepare reports, background materials, and preliminary materials in District-specified format.
- 1.7. Program Manager shall work cooperatively with the Design Team and the District to:
 - 1.7.1. Define and schedule the Projects in the Program.
 - 1.7.2. Provide Services that will result in the development of an overall Program strategy with regard to phases, construction schedules, timing, budget, prequalification, Construction Manager procurement, Contractor procurement, construction materials, building systems, and equipment.
- 1.8. Organize an initial planning workshop to create baseline parameters for the Project(s), to define overall building requirements, Project(s) strategy, conceptual budget and schedule. Pursuant to understandings reached at these meetings, Program Manager will develop an implementation plan that identifies the various phases of the Project(s), coordination among phases, and budget and time constraints for each phase of the Project(s). The plan will include a detailed strategy, Program Budget and Program schedule as well as identification of critical events and milestone activities.

- 1.9. Perform constructability reviews, determine construction feasibility, availability of materials and labor, time requirements for installation and construction, and factors related to cost, including costs of alternative designs of materials, preliminary budgets, and possible economies.
- 1.10. Interface with Construction Manager(s), all general and/or trade Contractors, and all subcontractors during construction to ensure that the District is provided with an acceptable Program and the best value for taxpayer dollars.
- 1.11. Advise the District as to the regulatory agencies that have jurisdiction over any portion or all of the Program, and as to coordination with and implementation of the requirements of the regulatory agencies, including without limitation DSA.
- 1.12. Contract for or employ, at Program Manager's expense, subconsultant(s) to the extent deemed necessary for Program Manager's services. Nothing in the foregoing shall create any contractual relationship between the District and any subconsultant(s) employed by the Program Manager under terms of this Agreement.
- 1.13. Cooperate with other professionals employed by the District for the design, coordination or management of other work related to the Program and the Project(s), including District staff and consultants, Construction Manager(s), citizens' oversight committee, other District committees, and the community to facilitate the timely completion of the Program and the Project(s) within Board-approved budgets and to District design standards.
- 1.14. Chair, conduct and take minutes of periodic meetings between District and its design professional(s), the Site Committee meetings, and construction meetings during the course of the Program. Program Manager shall invite the District and/or its representative and the Project Inspector(s) to participate in these meetings. Program Manager shall keep meeting minutes to document comments generated in these meetings.
- 1.15. Develop for District approval a Program time schedule at the start of Program development that does the following:
 - 1.15.1. Provides sufficient time for prequalification, and if necessary the resolution of any appeals, bidding, and, if necessary, rebidding some, or all, of the individual bid packages;
 - 1.15.2. Coordinates and integrates the design professional(s)' design efforts with bidding schedules;
 - 1.15.3. Includes realistic activity sequences and durations, allocation of labor and materials and delivery of products requiring long lead-time procurement; and
 - 1.15.4. Takes into account the District's occupancy requirements (showing portions of the Program having occupancy priority and with ongoing operational occupancy requirements.)

- 1.16. Be responsible for the professional quality and technical accuracy of all cost estimates, constructability reviews, studies, reports, projections, opinions of the probable cost of construction, and other services furnished by Program Manager under this Agreement as well as coordination with all Master Plans, studies, reports and other information provided by District to Program Manager. Program Manager shall, without additional compensation, correct or revise any errors or omissions in materials it generates.
- 1.17. Maintain a log of all meetings, site visits or discussions held in conjunction with the work of the various Project(s) in the Program, with documentation of major discussion points, observations, decisions, questions or comments. These shall be furnished to the District and/or its representative for inclusion in the overall Program documentation.
- 1.18. At the request of the District, develop a Management Information System ("MIS") to assist in establishing communications between the District, Program Manager, Construction Manager(s), design professional(s), Contractor(s), Project Inspector(s) and other parties on the various Project(s) in the Program. In developing the MIS, the Program Manager shall interview the District's key personnel and others in order to determine the type of information to be managed and reported, the reporting format, the desired frequency for distribution of the various reports, the degree of accessibility by potential users, and the security protocol for the system.
- 1.19. Coordinate transmittal of documents to regulatory agencies for review and advise the District of potential problems in completion of such reviews.
- 1.20. Preparation of a bidders list for each package for approval by the District.
- 1.21. When acting as Construction Manager for specific projects:
 - 1.21.1. **Oversight of Prequalification Process.** The Program Manager will assist the District, the Design Team and, as applicable, the Construction Manager for a Project in pre-qualifying bidders and completing the prequalification process for award of a Construction Contract for a Project if prequalification is permitted or required by the District. The Program Manager's services hereunder may include, without limitation:
 - 1.21.1.1. Assistance with administration of the prequalification process;
 - 1.21.1.2. Assistance in development of documents necessary or appropriate for bidding the Construction Contract for a Project, including preparation and distribution of prequalification questionnaires;
 - 1.21.1.3. Development of bidders' interest in a Project;
 - 1.21.1.4. Assistance in conducting job walks and bidders' conferences and the maintenance and

- preparation of minutes of job walks or bidder's conferences;
 - 1.21.1.5. Assistance in responding to bidders' inquiries and the development of bid addenda as necessary or appropriate;
 - 1.21.1.6. Review of bid proposals for responsiveness to bid requirements, evaluation of bidder responsibility, and analysis of completed questionnaires;
 - 1.21.1.7. Interviewing possible bidders, references, bonding agents and financial institutions;
 - 1.21.1.8. Preparing recommendations for the District for pre-qualification of prospective bidders;
 - 1.21.1.9. Tabulations and evaluation of bid results along with a recommendation for award of the Construction Contract for a Project;
 - 1.21.1.10. Assisting with resolution of any appeals;
 - 1.21.1.11. For Lease Leaseback projects, coordinate Request for Qualifications/Proposals ("RFP") process and assist in negotiation of agreements, including, Preliminary Services Agreement, Site Lease, and Facilities Lease with guaranteed maximum price; and
 - 1.21.1.12. Preparation of agenda items for Board approval.
 - 1.21.2. **Communications to Board:** The Program Manager may be required to attend each Board meeting, and to provide updates at each meeting.
- 1.22. Attempt to generate interest among qualified bidders for Projects within the Program, including but not limited to telephonic and correspondence campaigns and preparing and placing notices and advertisements to solicit bids for the Project(s).
- 1.23. Provide documentation, pictures, and other information and assistance to the District for the District's use on a website for public access to show Program and Project(s) status.
- 1.24. Comply with any storm water management program that is approved by the District and applicable to the Program, at no additional cost to the District.
- 1.25. Ensure that all Project Contractor(s), sub-contractor(s), Architects and Construction Managers, and Program Managers, Architects and Construction Managers' subconsultant(s) comply with any District-approved storm water management program that is applicable to the Program and Project(s), at no additional cost to the District.

- 1.26. Provide direction and planning to ensure Program and Project(s) adherence to applicable environmental requirements such as those emanating from the Environmental Protection Agency ("EPA"), Cal/EPA, the California Environmental Quality Act ("CEQA"), the Tahoe Regional Planning Agency ("TRPA"), Air Quality Management District and State of California and Regional Water Quality Control Board laws, regulations and rules. The Program Manager shall comply with, and ensure that all Consultants, all Construction Managers, all Contractors and their subcontractors and design professionals and their subconsultants comply with, any storm water pollution prevention plans, other storm water management program and other environmental impact mitigation requirements that are approved by the District and applicable to the Program and Project(s), at no additional cost to the District.
- 1.27. Program Manager shall maintain accurate Program cost accounting records maintained with generally accepted accounting principles ("GAAP") on authorized work performed under unit costs, actual costs for labor and material, or other basis for maintaining required accounting records. Program Manager shall provide accounting records to the District on a monthly basis, or as reasonably requested by District. Program Manager shall afford the District access to these records and preserve these records for a period of three (3) years after final payment, at no cost to the District.
- 1.28. Program Manager is **NOT** responsible for:
 - 1.28.1. Ground contamination or hazardous material analysis.
 - 1.28.2. Any asbestos testing, design or abatement; however, it shall coordinate and integrate its work with any such information provided by District.
 - 1.28.3. Compliance with CEQA, except that Program Manager agrees to coordinate its work with that of any CEQA consultants retained by the District, and the work of Contractor(s) and the Design Team to provide current information for use in CEQA compliance documents.
 - 1.28.4. Historical significance report.
 - 1.28.5. Soils investigation.
 - 1.28.6. Geotechnical hazard report.
 - 1.28.7. Topographic survey, including utility locating services.
 - 1.28.8. Other items specifically designated as the District's responsibilities under this Agreement.
 - 1.28.9. As-built documentation from previous construction projects.

2. GENERAL PROGRAM SERVICES

- 2.1. **General:** Monitor and advise the District as to all material developments in the Program. Program Manager shall develop and implement with District approval reporting methods for schedules, cost and budget status, and projections for each Project in the District's Program. The Program Manager should be the focal point of all communication to and from the Construction Manager(s) for each Project and shall be copied on all communications between the District and its design professionals.
- 2.2. **Scheduling:** Prepare methods to track and report on schedule status for each Project and for the overall Program. Program Manager shall develop master schedules and milestone schedules for each Project, and shall report on same each month to the District.
- 2.3. **Cost Controls:** Prepare and implement methods to budget and track all expenditures on each Project. Program Manager shall generate monthly reports to the District reflecting this information.
- 2.4. **Communications to Board:** The Program Manager may be required to attend each Board meeting, and to provide updates at each meeting.

3. PLANNING AND ADMINISTRATION OF THE PROJECT

- 3.1. Cost Control. Program Manager shall develop and monitor an effective system of construction cost control for the Program. Program Manager shall identify variances between actual and budgeted or estimated costs and advise District and design professional(s) whenever a Program cost exceeds budgets or estimates. Program Manager shall manage the construction bids and contracts in accordance with the Program Budget.
- 3.2. Develop and implement District-approved implementation procedures, forms, and reporting requirements for the Project(s) that involve all members of the Project(s) teams, including District, design professional(s), Construction Manager(s), and construction Contractor(s).
- 3.3. Develop and implement a management control system to support such functions as planning, organizing, scheduling, budgeting, reporting progress and identifying and documenting problems and solutions for the Program and the various Projects within the Program. The system will allow for monthly progress reports to the District regarding the schedule for the Program and the various Projects within the Program.
- 3.4. Provide value engineering at the Schematic Design and/or 100% Design Development Phase. This evaluation will consist of a review of the proposed materials, equipment, systems and other items depicted in the Design Documents and shall be coordinated with the District's design guidelines and design professional(s). The Program Manager will prepare a value engineering report documenting the results of the evaluation and make recommendations to the District with respect to alternatives, deletions, or amendments of such proposed items that pertain to the anticipated construction costs, useful life, maintenance and operational costs and efficiencies. The Program Manager shall provide to the District value

engineering recommendations and cost/benefit analysis of those recommendations.

4. PRECONSTRUCTION PHASE

- 4.1. Provide overall coordination of the Program and the Project(s); serve as the focal point of communication, transmitting information to the District and Design Team on general aspects of the Program and the Project(s), including planning, scheduling, cost management, progress reporting, design review, dispute resolution, and documentation. Communications from the Contractor(s) to District and Project(s) Design Team shall be through the Construction Manager. The Construction Manager shall receive simultaneous copies of all written communications from the District or the Project(s) Design Team to the Contractor(s).
- 4.2. Work with the Design Team and District to develop the final sizes, choice of materials, services and utilities and other detailed design and performance criteria of the Program.
- 4.3. Perform or subcontract for constructability reviews of each Project at the Design Development Phase and at 90% of the Construction Documents Phase. The Program Manager shall review the design documents for clarity, consistency, constructability and coordination. The results of the review shall be provided in writing and as notations on the documents to the District. The Program Manager shall also make recommendations to the District with respect to constructability, construction cost sequence of construction, and construction duration. The Program Manager's actions in reviewing the design of the Project(s) and design documents and in making recommendations as provided herein are advisory only to the District. The design professional(s) are not third party beneficiaries of the Program Manager's work described in this paragraph.
- 4.4. Develop master bid/award schedule(s) including construction milestones for the various Projects within the Program through the completion of construction, as directed by District, in coordination with design professional(s) and advise and consult with Construction Manager(s) and District.
- 4.5. Establish schedules for any Consultant, and for any soils, hazardous materials testing, or other testing, and review costs, estimates, and invoices of each.
- 4.6. Organize an initial planning workshop to create baseline parameters for the Program, to define overall building requirements, Program strategy, conceptual budget and schedule. Pursuant to understandings reached at these meetings, Program Manager will develop an implementation plan that identifies the various phases of the Program, coordination among phases, and budget and time constraints for each phase of the Program. The plan will include a detailed strategy, master budget and master schedule as well as identification of critical events and milestone activities.
- 4.7. Provide updated cost estimates for the Program at the Schematic Design, Design Development, and Construction Documents Phase as directed by District; coordinate with design professional(s) and reconcile cost estimates with design professional(s)' estimates.

- 4.8. Advise District regarding "green building" technology and lifecycle costing, when applicable.
- 4.9. Oversee Construction Manager(s) coordination of all changes required by any utility company needed to complete the various Project(s) within the Program.
- 4.10. Review and tailor the District's front end documents for the Program. Coordinate with Construction Manager(s) for the various Project(s) within the Program to recommend the number of days required for the construction phase (and any sub-phases, such as hazardous material abatement) and recommend the amount of liquidated damages for each Project.
- 4.11. Where appropriate, the Program Manager shall provide: (i) assistance with administration of RFP/Q for selection of developer for Lease Lease Back; (ii) assistance in negotiation of preliminary services agreements and/or Lease Lease Back contract documents; (iii) preparation of agenda items for Board approval.

5. PRE-BIDDING PHASE

- 5.1. Conduct a telephonic and correspondence campaign to attempt to increase interest among qualified bidders.
- 5.2. Assist the District in preparing and placing notices and advertisements to solicit bids for the Project(s).
- 5.3. In consultation with the District and according to District-approved policies, procedures, and standards, implement procedures, forms, and reporting requirements for the Program. Establish, accordingly, a communications procedure for the Program that allows for decision making at appropriate levels of responsibility and accountability.
- 5.4. Work with the design professional(s) to modify or add to standard, special, or general conditions for contract documents that might be needed for unique Project or contract conditions, for the District's approval, and/or assist in the development of documents necessary for the bidding phase.
- 5.5. Make recommendations for development and implementation of procedures to comply with applicable bidding or RFP requirements for each Project as applicable and for expediting completion of the bidding process for each Project. The scope of the foregoing includes without limitation, recommendations of Program Manager with respect to: (a) pre-qualification of potential contractors; (b) combination of two or more of the Projects for design, bidding and/or construction purposes; and (c) alternative construction delivery approaches for each of the Projects, including consideration of a single general contractor and/or Lease Leaseback approach to construction for each Project.

6. BIDDING PHASE

- 6.1. Oversight of Bidding Process. The Program Manager will assist the District, the Design Team and, as applicable, the Construction Manager for a Project in completing the bidding process for award of a Construction Contract for a Project. The Program Manager's services hereunder may include, without limitation: (i) recommendations for pre-qualification of prospective bidders; (ii) assistance in development of documents necessary or appropriate for bidding the Construction Contract for a Project; (iii) development of bidders' interest in a Project; (iv) assistance in responding to bidders' inquiries and the development of bid addenda as necessary or appropriate; (v) assistance in conducting job walks and bidders' conferences and the maintenance and preparation of minutes of job walks or bidder's conferences; (vi) review of bid proposals for responsiveness to bid requirements and evaluation of bidder responsibility; (vii) tabulations and evaluation of bid results along with a recommendation for award of the Construction Contract for a Project; and (viii) preparation of agenda items for Board approval.

7. CONSTRUCTION PHASE

- 7.1. Continually monitor whether construction contract requirements for the Program as a whole are being fulfilled and recommend courses of action to the District when Contractor(s) fails to fulfill contractual requirements.
- 7.2. Coordinate and monitor Construction Managers' performance in developing, implementing, and coordinating with assistance from the District, the design professional(s), and the Project Inspector, procedures for the submittal, review, verification and processing of applications by Contractor(s) for progress and final payments for all construction contracts.
- 7.3. Maintain a change order log for the Program compiling information from the change order logs maintained by the Construction Managers and implement procedures to expedite processing of change orders.
- 7.4. Implement procedures for issue identification and resolution of actual or potential claims of construction contractor(s) and take actions to mitigate all claims against the District and attempt to eliminate and/or settle all claims.
- 7.5. Assist District in selecting and retaining special consultants and testing laboratories and coordinate their services.
- 7.6. To guard District against defects in the work of the construction contractor(s), Program Manager shall establish and implement a quality control program for Construction Managers to monitor the quality and workmanship of construction for conformity with:
 - 7.6.1. Accepted industry standards;
 - 7.6.2. Applicable laws, rules, regulations, or ordinances; and
 - 7.6.3. The design documents and Contract Documents.

- 7.7. Where the work of a construction Contractor does not conform as set forth above, Program Manager shall, with the input of design professional(s), obtain and compile reports from a Project's Construction Manager that:
 - 7.7.1. Notify the District of any non-conforming work observed by the Program Manager;
 - 7.7.2. Reject the non-conforming work; and
 - 7.7.3. Take any and all action(s) necessary to compel the construction Contractor(s) to correct the work.
- 7.8. Obtain from the Construction Manager, compile, evaluate, track, and maintain Program-wide reports based on each Construction Manager's logs of requests for information ("RFI") from construction Contractor(s) and responses, shop drawings, samples, and other submittals, based, in part, on information obtained from the design professional(s). Advise District as to status and criticality of RFIs.
- 7.9. Establish and implement procedures, in collaboration with the District, Construction Manager(s), and design professional(s), for expediting the processing and approval of shop drawings, product data, samples, and other submittals for each contract. Maintain Program-wide records of submittal and shop drawing logs based on reports by Project Construction Manager(s).

8. PROJECT COMPLETION

- 8.1. The Program Manager shall conduct, with the Architect(s), Construction Manager(s), and District, final inspections of the Projects or designated portions thereof. The Construction Manager shall notify the Program Manager and the Program Manager shall notify District of final completion.
- 8.2. The Program Manager shall consult with the Architect(s), Project Inspector, Construction Manager(s), and the District, and the District shall determine when the Projects and the Contractors' work are finally completed. The Program Manager shall assist the District and the Construction Manager with the issuance of a Certificate of Final Completion for each Project, and along with the Construction Managers, shall provide to the District a written recommendation regarding payment to the Contractors.

9. FINAL DOCUMENTS

The Program Manager shall coordinate with Construction Manager(s) to review and monitor all As-Built Drawings, maintenance and operations manuals, and other closeout documents for each Project to be sure all required documents meeting contract requirements are provided, and shall secure and transmit to the District those documents and all required guarantees, keys, manuals, record drawings, and daily logs. The Program Manager shall also forward all documents and plans to the District upon completion of the Program and ensure all such plans and documents are well organized for any appropriate audit or review of the Program.

10. WARRANTY

The Program Manager shall implement a Warranty Inspection and Warranty Work procedure that all Construction Managers and Contractors are to follow. The procedure shall include a twelve (12) month call back period and a final warranty inspection eleven (11) months after a Project's completion to inspect the Project and identify any outstanding warranty work.

EXHIBIT "B"

CRITERIA AND BILLING FOR EXTRA SERVICES

The following Extra Services to this Agreement shall be performed by Program Manager if needed and requested by District as indicated in the Agreement:

1. Providing services required because of significant documented changes in the Program initiated by the District, including but not limited to size, quality, complexity or the District's schedule.
2. Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing services required in connection with replacement of such work.
3. Providing services made necessary by the default of Contractor(s), or by major defects or deficiencies in the work of a Contractor, or by failure of performance of the District's consultants.
4. Seeking variances or changes to agency guidelines on behalf of the District when so directed by the District
5. Preparing to serve or serving as a witness in connection with any public hearing, dispute resolution proceeding or legal proceeding, other than that necessitated by the negligent acts, errors or omissions of Program Manager or where the Program Manager is a party thereto, except for a Contractor's hearing necessitated by a bid protest or by a Contractor's prequalification appeal, or by a Contractor's request to substitute a subcontractor, or by handling of any stop notices.
6. Performing technical inspection and testing.
7. Providing other services not otherwise included in this Agreement and not customarily furnished in accordance with the generally accepted scope of program or project management practice.

The rates identified in the Fee Schedule attached to **Exhibit "D"** include overhead, administrative cost and profit and shall be utilized in arriving at the fee for Extra Services.

EXHIBIT "C"

SCHEDULE OF WORK

[Reserved – to be determined]

EXHIBIT "D"

FEE SCHEDULE

Compensation

1. The Program Manager's Fee set forth in this Agreement shall be full compensation for all of Program Manager's Services incurred in its performance, including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Project location (travel reimbursements must be approved by District prior to travel), offices, per diem expenses, printing, providing, or shipping of deliverables in the quantities set forth in **Exhibit "A."**
2. The amount of compensation shall be the amount set forth in the Agreement, including all billed expenses. No compensation will be paid or due without advance written approval of the District.

Method of Payment

1. Program Manager shall submit monthly invoices on a form and in the format approved by the District.
2. Program Manager shall submit these invoices in duplicate to the District via the District's authorized representative.
3. Program Manager shall submit to District on a monthly basis documentation showing proof that payments were made to Program Manager's Consultants, sub-consultants, and/or subcontractors.
4. Upon receipt and approval of Program Manager's invoices, the District agrees to make payments on all undisputed amounts within thirty (30) days of receipt of the invoice.
5. If Program Manager fails to timely and completely perform its obligations under this Agreement, the District may withhold or deduct the amounts that would be due therefore from amounts otherwise due Program Manager hereunder with the amounts withheld or deducted being released after Program Manager has fully cured such failure of performance, less costs, damages or losses sustained by the District resulting therefrom.

Hourly Rates

1. The following rates, which include overhead, administrative cost and profit, shall be utilized in arriving at the fee for Extra Services and shall not be changed for the term of the Agreement. Program Manager shall bill in quarter-hour increments for all Extra Services.

<u>Job Title</u>	<u>Hourly Rate</u>
Principal In Charge:	\$205.00
Regional Vice President:	\$190.00
Program Manager (s):	\$145.00
Assistant Program Manager	\$145.00
Director of Construction	\$145
Scheduling	\$145

<u>Job Title</u>	<u>Hourly Rate</u>
Design Manager (and Cost Estimating)	\$135.00
Budget Manager (and Project Engineer Service)	\$135.00
Administrative Assistant	\$75

2. The mark-up on any approved item of Extra Services performed by sub-consultant(s) or subcontractor(s) shall not exceed five percent (5%).

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Exhibit E

CRIMINAL BACKGROUND INVESTIGATION/FINGERPRINTING CERTIFICATION

PROJECT/CONTRACT NO.: _____ between San Rafael City Schools
("District") and _____ ("Program Manager") for the
_____("Contract" or "Program").

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of the Program Manager currently under contract with the District; that I am familiar with the facts herein certified; and that I am authorized and qualified to execute this certificate on behalf of the Program Manager.

Program Manager certifies that it has taken at least one of the following actions with respect to the Program that is the subject of the Contract (check all that applies):

_____ The Program Manager has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Program Manager's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Program Manager's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

_____ Pursuant to Education Code section 45125.2, Program Manager has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Program Manager's employees and District pupils at all times; and/or

_____ Pursuant to Education Code section 45125.2, Program Manager certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Program Manager who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Program Manager's employees and its subcontractors' employees is

Name: _____

Title: _____

_____ The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

Program Manager's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils

regardless of whether they are designated as employees or acting as independent contractors of the Program Manager.

Date: _____

Proper Name of Program Manager : _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT