

**AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES  
BY AND BETWEEN  
MILPITAS UNIFIED SCHOOL DISTRICT  
AND  
KITCHELL  
FOR  
PAVING, HVAC & ROOFING PROJECTS**

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## AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

This Agreement for Construction Management Services ("Agreement") is made as of **April 29, 2020**, between the **Milpitas Unified School District** ("District") and **Kitchell CM** ("Consultant") (individually a "Party" and collectively the "Parties"), for the construction management and administration of the following project(s) (individually and collectively referred to herein as the "Project(s)"):

- **Perform construction management services for Paving, HVAC and Roofing projects.**

The Project may include multiple components. Any one of the components or combination thereof may be changed, including terminated, in the same manner as the Project, 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). Consultant shall invoice for each component separately and District shall compensate Consultant for each component separately on a proportionate basis based on the level and scope of work completed for each component.

That 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 Project, including all consultants to the Architect(s). The Architect is a member of the Design Team
  - 1.1.3. **Construction Budget:** The total amount indicated by the District for the Project plus all other costs, including design, construction, administration, financing, and all other costs.
  - 1.1.4. **Construction Cost Budget:** A component of the Construction that is the total cost to District of all elements of the Project designed or specified by the Design Team, as adjusted at the end of each design phase in accordance with this Agreement. The Construction Cost Budget does not include the compensation of the Consultant, the Design Team, the Consultant, the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District.
  - 1.1.5. **Consultant(s):** The entity listed in the first paragraph including all sub-consultant(s), subcontractor(s), or agent(s) to the Consultant.
  - 1.1.6. **Design Team:** The architect(s), engineer(s), and other designer(s) that the District designates as designing all or a portion of the Project, including all consultants to the architect(s), engineer(s) or other designer(s), who have a responsibility to the District to design all or a portion of the Project either directly or as a subconsultant or subcontractor.
  - 1.1.7. **District:** The Milpitas Unified School District.
  - 1.1.8. **DSA:** The Division of the State Architect.
  - 1.1.9. **Extra Services:** Extra Services are defined in Article 7 and **Exhibit B**.

- 1.1.10. **Fee:** The Consultant's Fee is defined herein, payable as set forth herein and in **Exhibit D**.
- 1.1.11. **Service(s):** All labor, materials, supervision, services, tasks, and work that the Consultant 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 the Project.

**Article 2. Scope, Responsibilities and Services of Consultant**

- 2.1. **Scope:** Consultant shall provide the Services described herein and under **Exhibit A** for the Project. The District reserves the right to change the Services of which the Parties agree may require the Consultant's Fee and Scope as well as certain terms and conditions of this Agreement to be adjusted by an amendment, in writing and signed by both Parties.
- 2.2. **Coordination:** In the performance of Consultant's services under this Agreement, Consultant 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 Team, and the persons responsible for operation of the District's Labor Compliance Program, if any. If the Consultant employs Consultant(s), the Consultant shall ensure that its contract(s) with its Consultant(s) include language notifying the Consultant(s) of the District's Labor Compliance Program, if any.
- 2.3. **Consultant's Services:** Consultant 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. Consultant's services will be completed in accordance with the schedule attached as **Exhibit C**.

**Article 3. Consultant Staff**

- 3.1. The Consultant has been selected to perform the work herein because of the skills and expertise of key individuals.
- 3.2. The Consultant agrees that the following key people in Consultant's firm shall be associated with the Project in the following capacities:

<u>Job Title</u>	<u>Name</u>
Principal in Charge	Jim Wilson
Director	
Consultant(s)	
Administrative Personnel	
Other	
Other	

- 3.3. The Consultant shall not change any of the key personnel listed above without prior written approval by District, unless said personnel cease to be employed by Consultant. In either case, District shall be allowed to interview and approve replacement personnel.
- 3.4. If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice the Consultant shall immediately remove that person from the Project and provide a temporary replacement. Consultant shall within seven (7) days 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.

- 3.5. Consultant represents that the Consultant 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 Consultant.

**Article 4. Schedule of Services**

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

**Article 5. Construction Cost Budget**

- 5.1. The Consultant shall have responsibility to develop, review, and reconcile the Construction Cost Budget with the Design Team and the District throughout the design process and construction.
- 5.2. 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 Consultant, the Project design professional(s), the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District.
- 5.3. Consultant shall work cooperatively with the Project design professional(s) 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 professional(s) will not exceed the Construction Cost Budget, as may be adjusted subsequently with the District's written approval. The Consultant shall notify the District if it believes the construction cost of the work by the Project design profession(s) will exceed the Construction Cost Budget. The Consultant, however, shall not perform or be responsible for any design or architectural services.
- 5.4. Evaluations of the District's Construction Budget, and preliminary and detailed cost estimates prepared by the Consultant, represent the Consultant's best judgment as a professional familiar with the construction industry.
- 5.5. If the Procurement 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.
- 5.6. If any of the following events occur:
- 5.6.1. If the lowest responsive base bid or proposal received is in excess of ten percent (10%) of the Construction Cost Budget, or
- 5.6.2. If the combined total of base bid or proposal and all additive alternates come in fifteen percent (15%) or more under the Construction Cost Budget, or
- 5.6.3. If the Construction Cost Budget increases in phases subsequent to the Schematic Design Phase due to reasonably foreseeable changes in the condition of the construction market in the county in which the District is located, in so far as these have not been caused by Acts of God, earthquakes, strikes, war, or energy shortages due to uncontrollable events

in the world economy,

then the District, in its sole discretion, has one or a combination of the following alternatives:

- 5.6.3.1. Give the Consultant written approval on an agreed adjustment to the Construction Cost Budget.
- 5.6.3.2. Authorize the Consultant to re-negotiate, where appropriate, or re-bid or re-solicit within three (3) months' time (exclusive of District and other agencies' review time) at no additional cost to the District.
- 5.6.3.3. Terminate this Agreement if the Project is abandoned, without further obligation by either party.
- 5.6.3.4. Instruct the Project design professional(s) to revise the drawings and specifications to bring the Project within the Construction Cost Budget for re-bidding or re-soliciting, with Consultant's performing cost estimating, value engineering, and/or bidding and solicitation support at no additional cost to the District.

- 5.7. The Construction Cost Budget shall be reconciled at the completion of each design phase.

**Article 6. Fee and Method of Payment**

- 6.1. District shall pay Consultant

One Hundred Eighteen Thousand Eight Hundred Thirty Dollars (\$118,830.00) for all services contracted for under this Agreement and based on the Fee Schedule attached to **Exhibit D**.

- 6.2. District shall pay Consultant the Fee pursuant to the provisions herein and in **Exhibit D**.
- 6.3. No increase in Fee will be due from change orders generated during the construction period to the extent caused by Consultant's error.
- 6.4. The Consultant's Fee set forth in this Agreement shall be full compensation for all of Consultant'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 Project location, offices, per diem expenses, printing, providing, or shipping of deliverables in the quantities set forth in **Exhibit A**. ("Fee")

**Article 7. Payment for Extra Services**

- 7.1. District-authorized Services outside of the scope in **Exhibit A** or District-authorized reimbursable fees not included in Consultant's Fee are "Extra Services." Any charges for Extra Services shall be paid by the District as described in **Exhibit B** 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.
- 7.2. A written proposal describing the proposed scope of services and listing the personnel, labor duration, rates, and cost shall be submitted by the Consultant to the District for written approval before proceeding with any Extra Services.

**Article 8.           Ownership of Data**

After completion of the Project or after termination of this Agreement, Consultant shall deliver to District a complete set of Project records, including without limitation all documents generated by Consultant, copies of all documents exchanged with or copied to or from all other Project participants, and all closeout documents. Project records shall be indexed and appropriately organized for easy use by District personnel. All Project records are property of the District, whether or not those records are in the Consultant's possession.

**Article 9.           Termination of Agreement**

- 9.1. If Consultant fails to perform Consultant's duties to the satisfaction of the District, or if Consultant fails to fulfill in a timely and professional manner Consultant's material obligations under this Agreement, or if Consultant violates 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 Consultant. In the event of a termination pursuant to this subdivision, Consultant 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 Consultant's actions, errors, or omissions that caused the District to terminate the Consultant.
- 9.2. 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, Consultant 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 Consultant's if there is a termination for convenience.
- 9.3. The Consultant 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 Consultant. Such termination shall be effective after receipt of written notice from Consultant to the District.
- 9.4. 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.
- 9.5. If, at any time in the progress of the Project, the governing board of the District determines that the Project should be terminated, the Consultant, upon written notice from the District of such termination, shall immediately cease work on the Project. The District shall pay the Consultant only the Fee associated with the Services provided, since the last invoice that has been paid and up to the notice of termination.
- 9.6. If the Project is suspended by the District for more than one hundred and eighty (180) consecutive days, the Consultant shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the schedule shall be adjusted and the Consultant's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Consultant's services. Upon resumption of the Project after suspension, the Consultant will take all reasonable efforts to maintain the same Project personnel.

**Article 10.         Indemnity**

- 10.1. Consultant shall indemnify, protect, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, members, and volunteers ("Indemnified Parties") from any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney's and consultants' fees and causes of action, including personal injury and/or death ("Claim(s)"), to the extent that the Claim(s) arises out of, pertains to, or relates to the negligence (active or passive, ordinary or gross), recklessness (ordinary or gross), errors or omissions, or willful misconduct of Consultant, its directors, officials, officers, employees, contractors, subcontractors, consultants, sub-consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. This indemnity excludes Consultant's liability as to the active or sole negligence or willful misconduct of the District.
- 10.2. Consultant shall defend and pay all costs, expenses and fees to defend the Indemnified Parties, from any and all Claim(s), to the extent that the Claim(s) arises out of, pertains to, or relates to the alleged negligence (active or passive, ordinary or gross), recklessness (ordinary or gross), errors or omissions, or willful misconduct of Consultant, its directors, officials, officers, employees, contractors, subcontractors, consultants, sub-consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. District shall have the right to accept or reject any legal representation that Consultant proposes to defend the Indemnified Parties.

#### **Article 11. Fingerprinting**

- 11.1. Unless the District has determined pursuant to Education Code section 45125.2 that on the basis of scope of work in this Agreement that Consultant and its subcontractors and employees will have only limited contact with pupils, the Consultant 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 Consultant shall not permit any employee to have any contact with District pupils until such time as the Consultant has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Consultant'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 Consultant. 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 Project and prior to permitting contact with any student.
- 11.2. No drugs, alcohol and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, or contractors are to use drugs on these sites.
- 11.3. Unacceptable and/or loud language will not be tolerated. "Cat calls" or other derogatory language toward students or public will not be allowed.

#### **Article 12. Responsibilities of the District**

- 12.1. The District shall examine the documents submitted by the Consultant and shall render decisions so as to avoid unreasonable delay in the process of the Consultant's services.
- 12.2. The District shall provide to the Consultant complete information regarding the District's requirements for the Project.

- 12.3. 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).
- 12.4. The District shall, in a timely manner, and with Consultant'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 Consultant's and/or the design professional(s) duties to recommend or provide same.
- 12.5. The District, its representatives, and consultants shall communicate with the contractor either directly or through the Consultant.
- 12.6. 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 Consultant.
- 12.7. 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's 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 13. Liability of District**

- 13.1. 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 for the services performed in connection with this Agreement.
- 13.2. Any and all costs incurred by District, or for which District may become liable, to the extent caused by negligent delays of Consultant in its performance hereunder, shall be paid to District by Consultant as provided for herein and/or under California law.
- 13.3. 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 Consultant, or by its employees, even though such equipment be furnished or loaned to Consultant by District.
- 13.4. The Consultant 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. Consultant 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 Consultant's insurance company on behalf of the District.

**Article 14. Insurance**

- 14.1. Consultant shall procure prior to commencement of the work of this Agreement 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 Consultant, their agents, representatives, employees and Consultant(s).
- 14.2. **Minimum Scope and limits of Insurance:** Coverage shall be at least as broad as the following scopes and limits:



- 14.2.1. **Commercial General Liability.** Two million dollars (\$2,000,000) 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 this project/location or the general aggregate limit shall be twice the required occurrence limit.
- 14.2.2. **Commercial Automobile Liability, Any Auto.** Two million dollars (\$2,000,000) per accident for bodily injury and property damage.
- 14.2.3. **Workers' Compensation.** Statutory limits required by the State of California and
- 14.2.4. **Employer's Liability.** Two million dollars (\$2,000,000) per accident for bodily injury or disease.
- 14.2.5. **Professional Liability.** This insurance shall cover the Consultant and his/her Consultant(s) for three million dollars (\$3,000,000) 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 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.
- 14.3. The District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.
- 14.4. **Deductibles and Self-Insured Retention:** Any deductibles or self-insured retention exceeding \$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 Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 14.5. **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
  - 14.5.1. All policies except for the professional insurance policy shall be written on an occurrence form
  - 14.5.2. The District, the Consultant, 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 Consultant; instruments of service and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.
  - 14.5.3. For any claims related to this project, the Consultant'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 Consultant's insurance and shall not contribute with it.
  - 14.5.4. 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.

- 14.5.5. The Consultant'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.
- 14.5.6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, 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.
- 14.6. **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.
- 14.7. **Verification of Coverage:** Consultant shall furnish the District with:
  - 14.7.1. Certificates of insurance showing maintenance of the required insurance coverage;
  - 14.7.2. 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 15. Nondiscrimination**

Consultant agrees that no discrimination shall be made in the employment of persons under this Agreement because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of such person. Consultant shall comply with any and all regulations and laws governing nondiscrimination in employment.

**Article 16. Covenant Against Contingent Fees**

Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, 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 Consultant, 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.

**Article 17. Entire Agreement/Modification**

This Agreement, including the Exhibits hereto, supersedes all previous contracts and constitutes the entire understanding of the parties hereto. Consultant 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. Consultant specifically acknowledges that in entering this Agreement, Consultant relies solely upon the provisions contained in this Agreement and no others.

**Article 18. Non-Assignment of Agreement**

In as much as this Agreement is intended to secure the specialized services of the Consultant,

Consultant 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. Likewise, District may not assign, transfer, delegate or sublet any interest therein without the prior written consent of Consultant and any such assignment, transfer, delegation or sublease without Consultant's prior written consent shall be considered null and void.

**Article 19. Law, Venue**

- 19.1. 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.
- 19.2. 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 20. Alternative Dispute Resolution**

Disputes between the parties arising out of this Agreement shall be resolved by the following processes:

- 20.1. **Negotiation.** The parties shall first attempt in good faith to resolve any dispute arising out of or relating to this Agreement by negotiation. The Parties' meet and confer process for Disputed Architect Invoice Detail as detailed above, shall satisfy this negotiation requirement.
- 20.2. **Mediation.** Within thirty (30) days following the earlier of receipt of notice by one Party from the other Party of a demand for mediation, the Parties shall:
  - 20.2.1. Administer the dispute pursuant to the Mandatory Mediation provisions indicated herein, or
  - 20.2.2. If there are no other parties involved, administer the dispute pursuant to non-binding mediation administered in accordance with the Commercial Mediation Rules of JAMS/Endispute, unless waived by mutual stipulation of both Parties.
- 20.3. **Litigation.** Disputes arising from this Agreement that cannot be settled through negotiation or mediation (after those processes have been exhausted) shall be litigated in the California Superior Court in the county in which the Project that is the subject of this Agreement is located.

**Article 21. 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 22. Employment Status**

- 22.1. Consultant 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 Consultant performs the services which are the subject matter of this Agreement; provided always, however, that the services to

be provided by Consultant shall be provided in a manner consistent with all applicable standards and regulations governing such services.

- 22.2. Consultant understands and agrees that the Consultant'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 or for membership in any District retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a District employee.
- 22.3. 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 Consultant 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 Consultant which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 22.4. Should a relevant taxing authority determine a liability for past services performed by Consultant for District, upon notification of such fact by District, Consultant shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Consultant under this Agreement (and offsetting any amounts already paid by Consultant which can be applied as a credit against such liability).
- 22.5. 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, Consultant shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Consultant is an employee for any other purpose, then Consultant 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 Consultant was not an employee.
- 22.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

#### **Article 23.      Warranty of Consultant**

- 23.1. Consultant warrants that the Consultant 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.
- 23.2. Consultant 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 it will comply with those provisions before commencing the performance of the work of this Agreement.
- 23.3. **Labor Code Requirements.** Consultant 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 Consultant is performing work as part of an applicable "public works" or "maintenance" project, and since the total compensation is One Thousand Dollars (\$1,000) or

more, the Consultant shall comply with all **applicable** provisions of the California Labor Code sections 1720-1861, without limitation, the payment of the general prevailing per diem wage rates for public work projects (including repairs and maintenance, where applicable) of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with the District/COE. In addition, the Contractor and each subcontractor shall comply with Sections 1735, 1777.5 and 1777.6, forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. **Registration:** As applicable, Contractor and its subcontractors shall comply with the registration and qualification requirements pursuant to sections 1725.5 and 1771.1 of the California Labor Code. **Certified Payroll Records:** Contractor and its subcontractor(s) shall keep accurate certified payroll records of employees, as applicable, and shall make them available to the District/COE immediately upon request.

**Article 24. Cost Disclosure - Documents and Written Reports**

Consultant 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 25. Communications / 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:

<b><u>District</u></b> Milpitas Unified School District 1331 E. Calaveras Blvd. Milpitas, CA 95035 ATTN: Wendy Zhang, Assistant Superintendent, Business Services	<b><u>Consultant</u></b> Kitchell 1180 Coleman Avenue, Suite 202 San Jose, CA 95110 ATTN: Jim Wilson
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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.

**Article 26. Disabled Veteran Business Enterprise Participation**

Pursuant to section 17076.11 of the Education Code, the District has a participation goal for disabled veteran business enterprises (DVBES) of at least three percent (3%), 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 Project may use funds allocated under the Act. Therefore, to the extent feasible, the Consultant 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 documentation demonstrating the Consultant’s good faith efforts to meet these goals.

**Article 27. Other Provisions**

- 27.1. The Consultant shall be responsible for the cost of construction change orders caused directly by the Consultant’s willful misconduct or negligent acts, errors or omissions. Without limiting

Consultant's liability for indirect or consequential cost impacts, the direct costs for which the Consultant 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.

- 27.2. Neither the District's review, 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 Consultant shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Consultant's failure to perform any of the services furnished under this Agreement to the standard of care of the Consultant for its Services, which shall be, at a minimum, the standard of care of Consultants performing similar work for California school districts at or around the same time and in or around the same geographic area of the District.
- 27.3. 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.
- 27.4. The Architect acknowledges that the District is a public agency that is subject to heightened curiosity by the news media and the public and that the Architect may not be apprised of all facts surrounding the Project that Architect is working on. Accordingly, Architect shall promptly refer all inquiries from the news media or public concerning this Agreement or its performance under the Agreement to the District, and Architect shall not make any statements or disclose any documents to the media or the public relating to the performance under this Agreement or the effects caused thereby. If Architect receives a complaint from a citizen or member of the public concerning the performance or effects of this Agreement, it shall promptly inform the District of that complaint. In its sole discretion, the District shall determine the appropriate response to the complaint.
- 27.5. Architect represents that the Architect 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 the Services and that no person having any such interest shall be employed by Architect.
- 27.6. Architect, and its Consultants, and employee(s) shall maintain the confidentiality of all information received in the course of performing the Services. Architect understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
- 27.7. **Exhibits A through E** and all Certificates attached hereto are hereby incorporated by this reference and made a part of this Agreement.

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

Dated: \_\_\_\_\_, 20\_\_

Dated: \_\_\_\_\_, 20\_\_

**Milpitas Unified School District**

**Kitchell**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: Wendy Zhang

Print Name: \_\_\_\_\_

Print Title: Assistant Superintendent,  
Business Services

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

**EXHIBIT A**  
**RESPONSIBILITIES AND SERVICES OF CONSULTANT**

Consultant shall provide professional services necessary for completing the following:

1. **CONSTRUCTION MANAGEMENT SERVICES.** Consultant shall provide these construction management services.

- 1.1 **General Construction Management Services**

- 1.1.1 Provide overall coordination of the Project; transmitting information to the District and Project team on general aspects of the Project, including progress reporting, design review, dispute resolution, and documentation. Communications from the contractor(s) to District and Project Design Team shall be through the Consultant. The Consultant shall receive simultaneous copies of all written communications from the District or the Project Design Team to the contractor(s).
- 1.1.2 Implement District-approved implementation procedures, forms, and reporting requirements for the Project that involve all members of the Project teams, including District, Design Team, and construction contractor(s).
- 1.1.3 Provide and maintain a management team on the Project sites.

- 1.2 **Preconstruction Phase Services**

- 1.2.1 Develop master bid/award schedule(s) including construction milestones for the Project through the completion of construction, as directed by District, in coordination with the Design Team and advise and consult with District. Consultant shall review and approve contractor(s)' schedules, but shall not dictate any contractor(s)' means and/or methods of performance.
- 1.2.2 Establish schedules for the soils consultant, for any hazardous materials testing and other consultants, and review costs, estimates, and invoices of each.
- 1.2.3 Consultant shall fully comply with the requirements related to the Construction Cost Budget and the Construction Budget indicated in the Agreement.
- 1.2.4 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 Project. The system will allow for monthly progress reports to the District regarding the schedule for the Project.
- 1.2.5 Organize an initial planning workshop to create baseline parameters for the Project, to define overall building requirements, Project strategy, conceptual budget and schedule. Pursuant to understandings reached at these meetings, Consultant will develop an implementation plan that identifies the various phases of the Project, coordination among phases, and budget and time constraints for each phase of the Project. The plan will include a detailed strategy, master budget and master schedule as well as identification of critical events and milestone activities.
- 1.2.6 Attend all planning, programming and master site planning meetings relating to the Project.



- 1.2.7 Provide updated cost estimates for the Project at the 100% Design Development ,50% Construction Documents Phase, and the 90% or 100% Construction Document Phase as directed by District; coordinate with the Design Team and reconcile cost estimates with Design Team's estimates.
- 1.2.8 Advise District regarding "green building" technology and lifecycle costing, including design review for adherence to Collaborative for High Performance Schools.

### 1.3 PRE-BID PHASE SERVICES

- 1.3.1 Review and revise the master schedule and the construction milestone schedule for the Project.
- 1.3.2 Work with the Design Team to modify or add to standard, special, or general conditions for Contract Documents that might be needed for unique Project or bid package conditions, for District's approval.
- 1.3.3 Work with the Design Team to separate the construction phase for the Project into bid packages.

### 1.4 Bidding Phase Services

- 1.4.1 **Bidder List.** Prepare a bidders list for each bid or RFP package for approval by District. Conduct a telephonic and correspondence campaign to attempt to increase interest among qualified bidders.
- 1.4.2 **Prequalification.** Assist the District in pre-qualifying bidders if prequalification is desired by the District. This service shall include the following:
  - 1.4.3 Preparation and distribution of prequalification questionnaires;
  - 1.4.4 Receiving and analyzing completed questionnaires;
  - 1.4.5 Interviewing possible bidders, bonding agents and financial institutions; and
  - 1.4.6 Preparing recommendations for the District.
- 1.4.7 **Advertisement.** Assist the District in preparing and placing notices and advertisements to solicit bids for the Projects.
- 1.4.8 Coordinate the delivery of bid documents to the bidders.
- 1.4.9 Conduct pre-bid conferences to familiarize bidders with the bidding documents, and any special systems, materials or methods and with Project procedures. Receive questions from bidders, referring questions to the Design Team and District as required. Coordinate with the Design Team to respond to bidder questions by addenda.
- 1.4.10 Prepare an estimate of costs for all addenda and submit the estimate to the District for approval.
- 1.4.11 Prepare bid analyses and advise District on compliance of bidders with District requirements and bid requirements. Report and recommend to District after review and evaluation. Make recommendations to District for prequalification of bidders and award of contracts or rejection of bids.

1.4.12 Conduct pre-award conferences with successful bidders.

**1.5 Construction Phase Services**

- 1.5.1 Schedule and conduct preconstruction meetings; maintain, prepare, and distribute minutes.
- 1.5.2 Oversee, administer and manage the implementation of the construction contracts.
- 1.5.3 Comply with any storm water management program that is approved by the State and County and applicable to the Project, at no additional cost to the District.
- 1.5.4 Ensure that all Project contractor(s), Project sub-contractor(s) and Consultant's sub-consultant(s) comply with any District-approved storm water management program that is applicable to the Project, at no additional cost to the District.
- 1.5.5 The Consultant shall comply with, and ensure that all contractors and their subcontractors and Design Team and their sub-consultants comply with all mitigation measures required by the District's compliance with the California Environmental Quality Act ("CEQA"), 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 Project, at no additional cost to the District.
- 1.5.6 Monitor the construction contractor(s) to verify that tools, equipment, and labor are furnished and work performed and completed within the time as required or indicated by the plans and specifications, to the satisfaction of the District. Consultant expressly agrees to verify that the specifications are met, observed, performed, and followed in accordance with the professional standards of care for construction management. Consultant shall not, however, be responsible for directing construction contractor(s)' means and methods.
- 1.5.7 Coordinate work of the construction contractor(s) and effectively manage the project to achieve the District's objectives in relation to cost, time and quality. Consultant shall not, however, be responsible for directing construction contractor(s)' means and methods.
- 1.5.8 Conduct construction meetings for the Project to discuss and resolve such matters as progress, quality and scheduling. Said meetings shall be weekly unless Project conditions do not require that frequency. Prepare and promptly distribute minutes. When required by field or other conditions, construction progress, or the quality of workmanship, conduct special construction meetings; record, prepare, and distribute minutes of these meetings to the District, the affected construction contractor(s), and the Design Team.
- 1.5.9 Ensure that construction contractor(s) provide construction schedules as required by their construction contracts, including activity sequences and durations, submittal schedule, or procurement schedule for products that require long lead time. Consultant shall review construction contractor(s)' construction schedules for conformity with the requirements of the construction contract(s) and conformity with the overall schedule for the Project. Where construction contractor(s)' construction schedules do not so conform, Consultant will take appropriate measures to secure compliance, subject to District approval.
- 1.5.10 Ensure construction contractor(s)' compliance with the requirements of their respective construction contracts for updating, revising, and other obligations relative to their respective construction schedules. Consultant shall incorporate construction contractor(s)' construction schedule updates and revisions into the Project construction schedule.

- 1.5.11 Continually monitor whether construction contract requirements are being fulfilled and recommend courses of action to the District when contractor(s) fails to fulfill contractual requirements.
- 1.5.12 The Consultant may authorize minor variations in the work from the requirements of the contract documents that do not involve an adjustment in the contract price or the contract time or design and which are consistent with the overall intent of the contract documents. The Consultant shall provide to the Design Team and the District copies of these authorizations.
- 1.5.13 Develop, implement, and coordinate with assistance from the District, the Design Team, and the Project Inspector(s) ("Inspector"), procedures for the submittal, review, verification and processing of applications by contractor(s) for progress and final payments for all construction contracts.
- 1.5.14 The Consultant shall review the Contractor(s)' Safety Program submittals and review and document the implementation of the Contractor(s)' Safety Program. The Consultant shall report any observed deviations from the Contractor(s)' Safety Program and applicable CalOSHA requirements to the appropriate contractor personnel and follow-up with a written safety notice to both the contractor and the District. Neither the Consultant nor the District shall be responsible for or have any liability for contractors(s) failure to provide, comply with or enforce said safety programs.
- 1.5.15 Record the progress of the Project by a daily log.
- 1.5.16 Monitor ongoing Project costs to verify that projected costs do not exceed approved master Program budget, the Construction Budget, and Construction Cost Budget and provide the District timely notice of any potential increase in costs in excess of approved budgets provided to Consultant.
- 1.5.17 Negotiate contractor's proposals and review change orders prepared by the Design Team, with the Design Team's input as needed, for approval by the District's governing board.
- 1.5.18 Maintain a change order log for the Project and implement procedures to expedite processing of change orders.
- 1.5.19 Implement procedures for issues 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.
- 1.5.20 Assist District in selecting and retaining special consultants including, without limitation, project inspectors, hazardous materials consultants, geotechnical engineers, surveyors, and testing laboratories, and coordinate their services.
- 1.5.21 In conjunction with the Inspector and the Design Team, monitor work of the construction contractor(s) to determine that the work is being performed in accordance with the requirements of the Construction Documents. As appropriate, with assistance from the Design Team and the Inspector, make recommendations to District regarding special inspection or testing of work that is not in accordance with the provisions of the construction Contract Documents.

- 1.5.22 To protect District against defects in the work of the construction contractor(s), Consultant shall establish and implement a quality control program to monitor the quality and workmanship of construction for conformity with:
- 1.5.23 Accepted industry standards;
- 1.5.24 Applicable laws, rules, or ordinances; and the design documents and Contract Documents;
- 1.5.25 Where the work of a Construction contractor does not conform as set forth above, Consultant shall, with the input of the Design Team:
- 1.5.26 Notify the District of any non-conforming work observed by the Consultant;
- 1.5.27 Reject the non-conforming work; and
- 1.5.28 Take any and all action(s) necessary to compel the construction contractor(s) to correct the work.
- 1.5.29 Maintain logs of requests for information ("RFI") from construction contractor(s), based on information obtained from the Design Team.
- 1.5.30 Establish and implement procedures, in collaboration with the District and the Design Team, for expediting the processing and approval of shop drawings, product data, samples, and other submittals for each contract. Receive and transmit all submittals from the Construction contractor(s) to the Design Team for review and approval. Maintain submittal and shop drawing logs.
- 1.5.31 Record the progress of work at the Project. When present, prepare daily reports for the Project containing a record of weather, construction contractor(s) present and their number of workers, work accomplished, problems encountered, and other relevant data.
- 1.5.32 Prepare and distribute monthly project status reports for the Project, including updates on project activities, progress of work, outstanding issues, potential problems, schedule, status of RFIs, change orders, and submittals.
- 1.5.33 Maintain at the Project site and, if necessary at the District Facilities office, a current copy of all approved documents, drawings, specifications, addenda, change orders and other modifications, and drawings marked by the construction contractor(s) to record all changes made during construction. These shall include shop drawings, product data, samples, submittals, applicable handbooks, maintenance and operating manuals and instructions, and other related documents and revisions which are relevant to the contract work. Maintain records of principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations as provided by the construction contractor(s). At the completion of the Project, deliver all such records to District. Construction contractor(s) and the Design Team share responsibility to prepare "Record Drawings" and "As-Built" documents.
- 1.5.34 **Claims and Stop Payment Notices.** Consultant shall receive and track all of the following and shall immediately notify the District and, if directed by the District, the District's legal counsel, of these items:
  - 1.5.34.1 Preliminary notices
  - 1.5.34.2 Stop notices,

1.5.34.3 Stop payment notices,

1.5.34.4 Payment bond claims,

1.5.34.5 Disputed contractor claims of any type including, without limitation, claims of design errors/omissions, extra compensation, extra time, etc.

## **1.6 Project Completion Services**

- 1.6.1 The Consultant shall observe, with District's maintenance personnel, the construction contractor's check-outs of utilities, operational systems and equipment, and start-up and testing. The Consultant shall maintain records of start-up and testing as provided by the construction contractor(s), ensure District of compliance with applicable provisions of the contract(s), that all work has been performed and accepted, and that all systems are complete and operative.
- 1.6.2 At the punch list phase of the Project or designated portions thereof, the Consultant shall, in consultation with the Architect(s), the Design Team and PI, ensure the preparation of a list of incomplete or unsatisfactory work or work which does not conform to the requirements of the contract documents ("punch list work") and a schedule for the completion of the punch list work. The Consultant shall provide this list to the construction contractor(s). The Consultant shall coordinate construction contractors' performance and completion of punch list work. The Consultant shall review the completed punch list work with the District, the Architect(s), the Design Team and PI. The Consultant shall ensure, with input from these entities, that the completed punch list work complies with applicable provisions of the Construction contract(s).
- 1.6.3 The Consultant shall determine, with the District, the Architect(s), the Design Team and PI, when the Project or designated portions thereof are complete.
- 1.6.4 The Consultant shall conduct, with the District, the Architect(s), the Design Team and PI, final inspections of the Project or designated portions thereof. The Consultant shall notify District of final completion.
- 1.6.5 The Consultant shall consult with the District, the Architect(s), the Design Team and PI and shall determine when the Project and the contractor's work are finally completed. The Consultant shall assist with the issuance of a Certificate of Final Completion, and shall provide to the District a written recommendation regarding payment to the contractors.

## **2. Final Documents Services**

- 2.1 The Consultant shall review, monitor and approve all as built drawings, maintenance and operations manuals, and other closeout documents 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 Consultant shall also forward all documents and plans to the District upon completion of the project and ensure all such plans and documents are well organized for any appropriate audit or review of the Project.
- 2.2 The Consultant shall use its best efforts and all due diligence to ensure all Project participants provide all required closeout documents and information on a timely basis and to not cause a delay in Project completion or DSA's approval of the Project.

### **3. Warranty**

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

### **4. Audit**

Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Pursuant to Government Code Section 8546.7, this Agreement shall be subject to examination and audit of the State Auditor as specified in the code. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.

**EXHIBIT B**  
**CRITERIA AND BILLING FOR EXTRA SERVICES FOR EXTRA SERVICES**

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

1. Providing services required because of significant documented changes in the Project initiated by the District, including but not limited to size, quality, complexity, the District's schedule, or method of bidding or negotiating and contracting for construction.
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 the contractor, or by failure of performance of the District's consultants, or in the absence of a final Certificate of Payment, more than sixty (60) days after the date of completion of work on the Project involved.
4. The selection, layout, procurement or specification at the District's request of movable furniture, furnishings, equipment or other articles that are not included in the Contract Documents.
5. Providing surveys relative to future facilities, systems or equipment which are not intended to be constructed during the Construction Phase.
6. Preparing to serve or serving as a witness in connection with any public hearing (except for a contractor's hearing necessitated by its request to substitute a subcontractor), dispute resolution proceeding or legal proceeding, other than that necessitated by the negligent acts, errors or omissions of Consultant or where the Consultant is party thereto.
7. Performing technical inspection and testing.
8. Providing any other services not otherwise included or reasonably inferred by the terms in this Agreement or not customarily furnished in accordance with generally accepted scope of project construction management practice.

**EXHIBIT C**  
**SCHEDULE OF WORK**




















See next page.



MUSD  
2020 Summer Roofing Projects




















[illegible]

Project: 200330 MUSD Summer  
Date: Tue 3/31/20

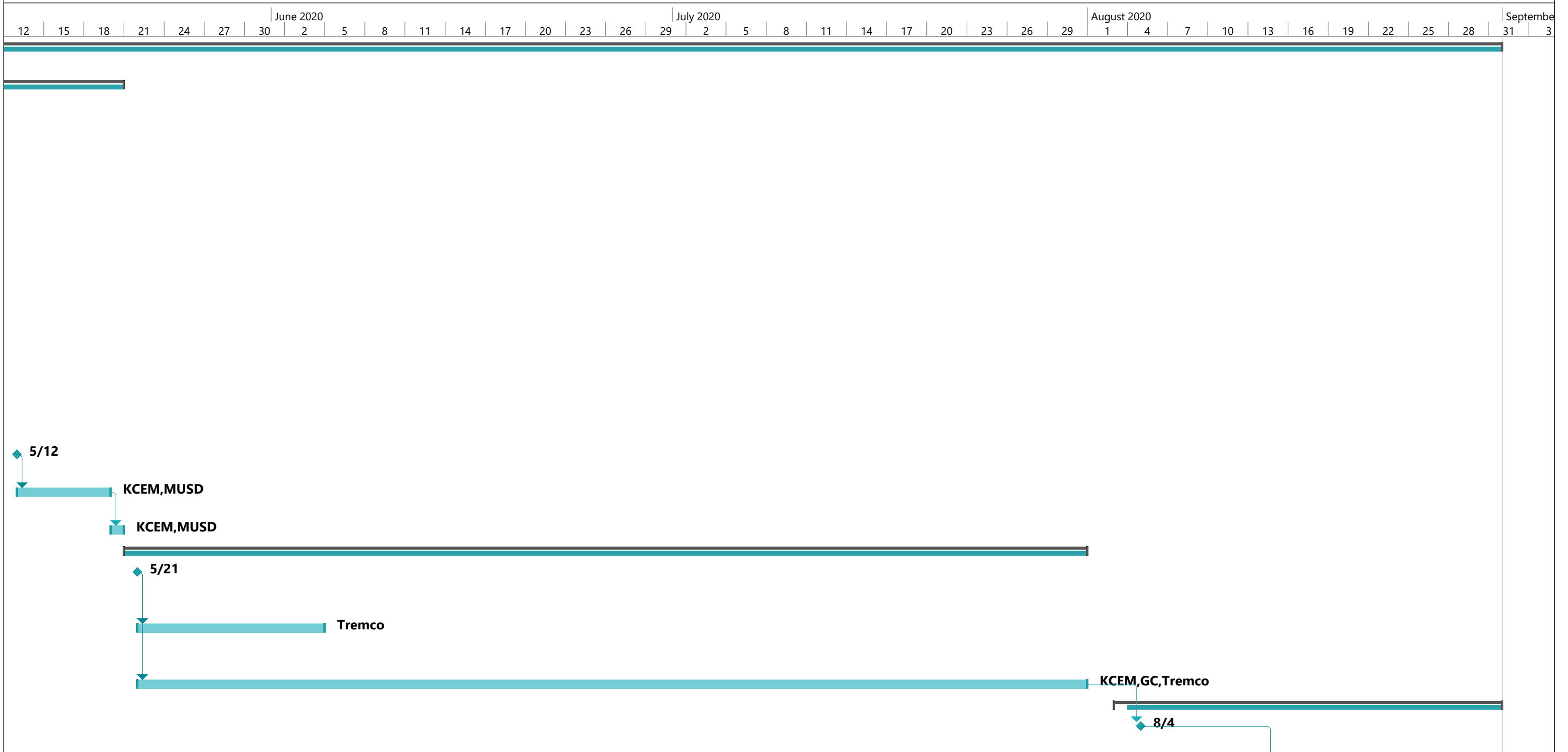
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Split		Inactive Task		Duration-only		Finish-only		Progress	
Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress	
Summary		Inactive Summary		Manual Summary		External Milestone			




















MUSD 2020 Summer Roofing Projects	
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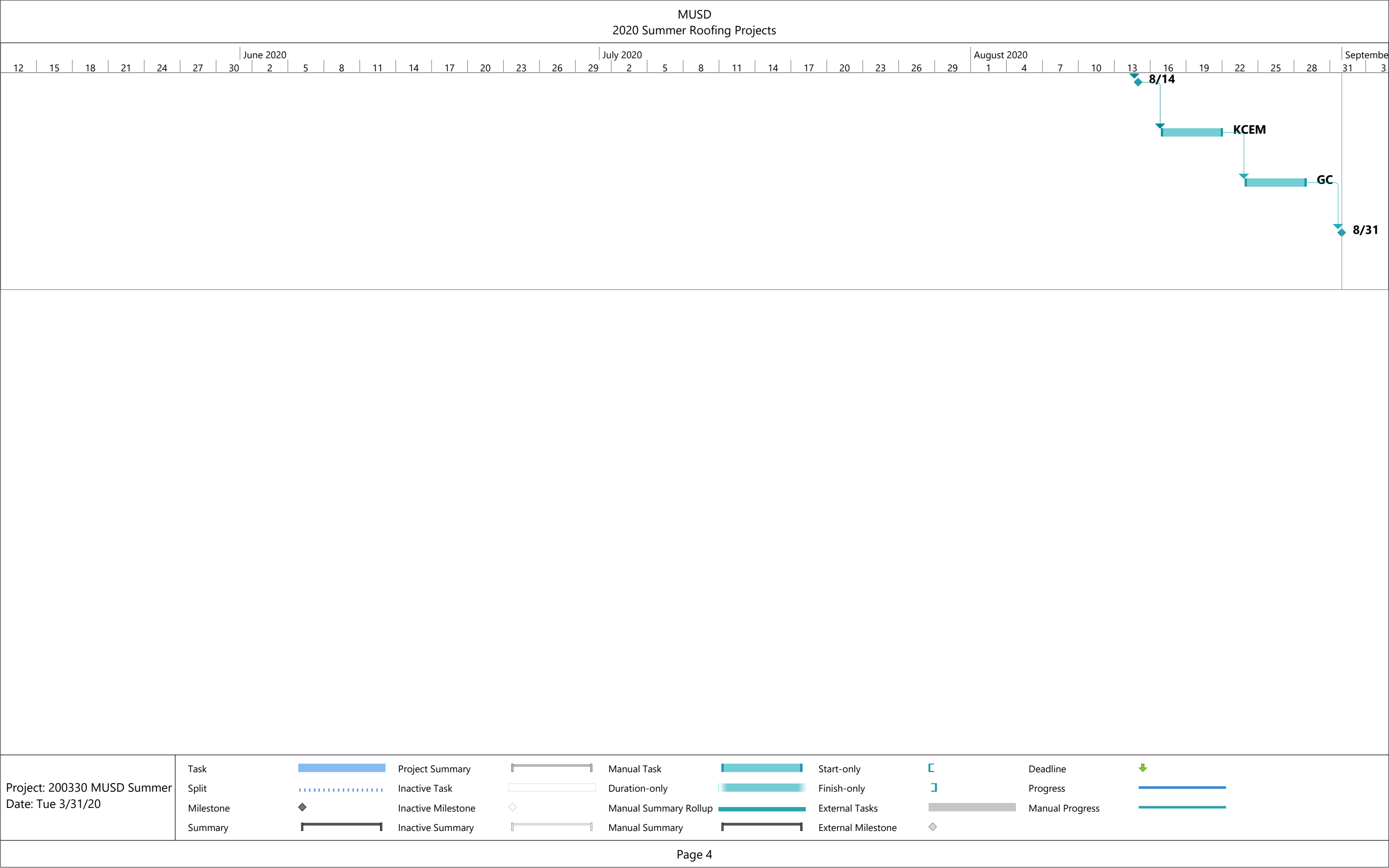
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							13	16	19	22	25	28	31	3	6	9	12	15	18	21	24	27	30	3	6	9				
23	Closeout documents due from contractors	1 day	Fri 8/14/20	Fri 8/14/20	22FS+7 days	GC																								
24	Closeout document review	5 days	Mon 8/17/20	Fri 8/21/20	23	KCEM																								
25	Closeout document revisions	5 days	Mon 8/24/20	Fri 8/28/20	24	GC																								
26	Turnover closeout documents to MUSD	1 day	Mon 8/31/20	Mon 8/31/20	25	KCEM																								

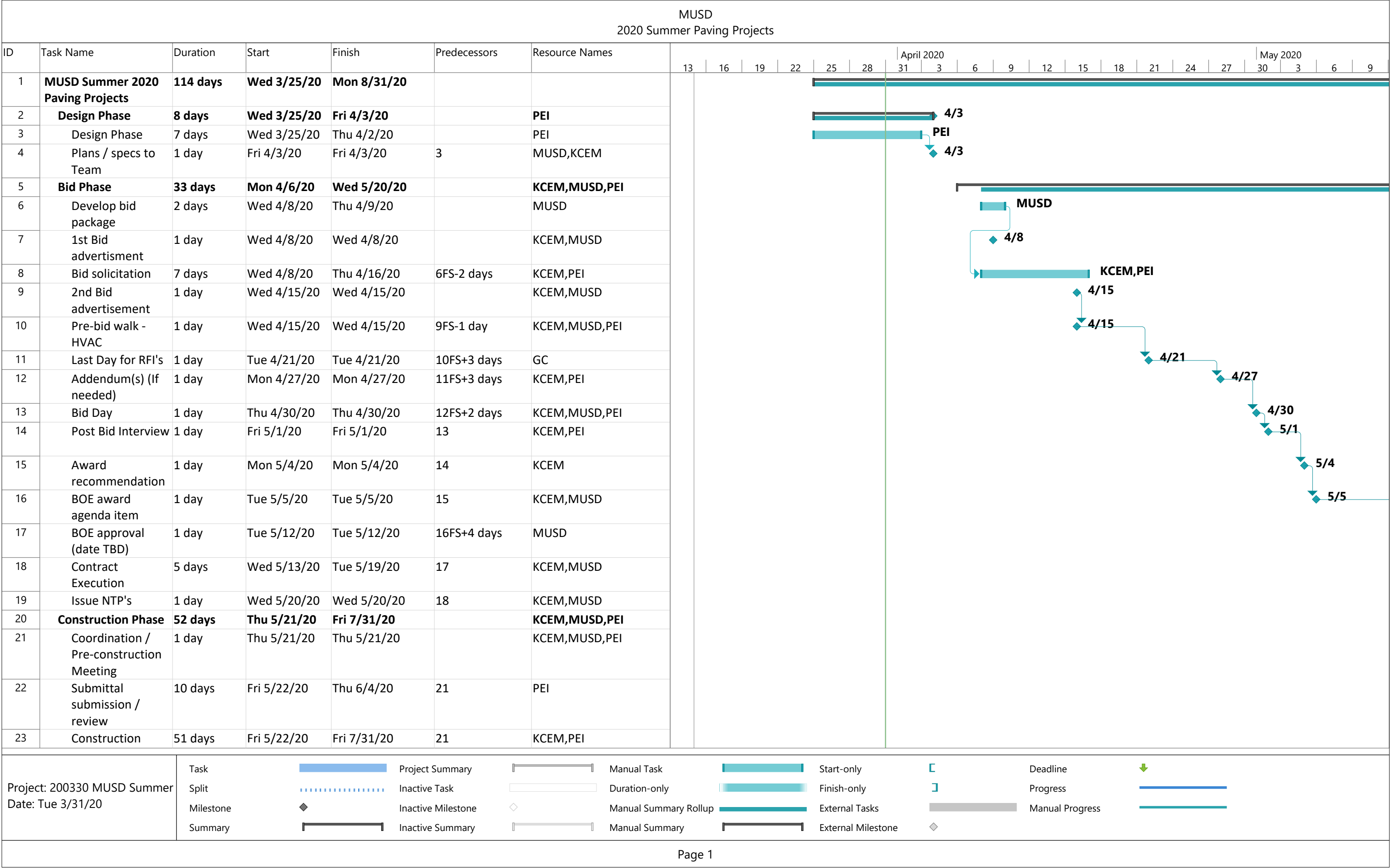
Project: 200330 MUSD Summer Date: Tue 3/31/20	Task		Project Summary		Manual Task		Start-only		Deadline	
	Split		Inactive Task		Duration-only		Finish-only		Progress	
	Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress	
	Summary		Inactive Summary		Manual Summary		External Milestone			

MUSD  
2020 Summer Roofing Projects



Project: 200330 MUSD Summer Date: Tue 3/31/20	Task		Project Summary		Manual Task		Start-only		Deadline	
	Split		Inactive Task		Duration-only		Finish-only		Progress	
	Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress	
	Summary		Inactive Summary		Manual Summary		External Milestone			





<p>MUSD</p> <p>2020 Summer Paving Projects</p>	
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ID	Task Name	Duration	Start	Finish	Predecessors	Resource Names								April 2020								May 2020			
							13	16	19	22	25	28	31	3	6	9	12	15	18	21	24	27	30	3	6
24	Closeout Phase	21 days	Mon 8/3/20	Mon 8/31/20		KCEM,PEI																			
25	Closeout meeting	1 day	Tue 8/4/20	Tue 8/4/20	23FS+1 day	KCEM																			
26	Closeout documents due from contractors	1 day	Fri 8/14/20	Fri 8/14/20	25FS+7 days	GC																			
27	Closeout document review	5 days	Mon 8/17/20	Fri 8/21/20	26	KCEM																			
28	Closeout document revisions	5 days	Mon 8/24/20	Fri 8/28/20	27	GC																			
29	Turnover closeout documents to MUSD	1 day	Mon 8/31/20	Mon 8/31/20	28	KCEM																			




















Project: 200330 MUSD Summer

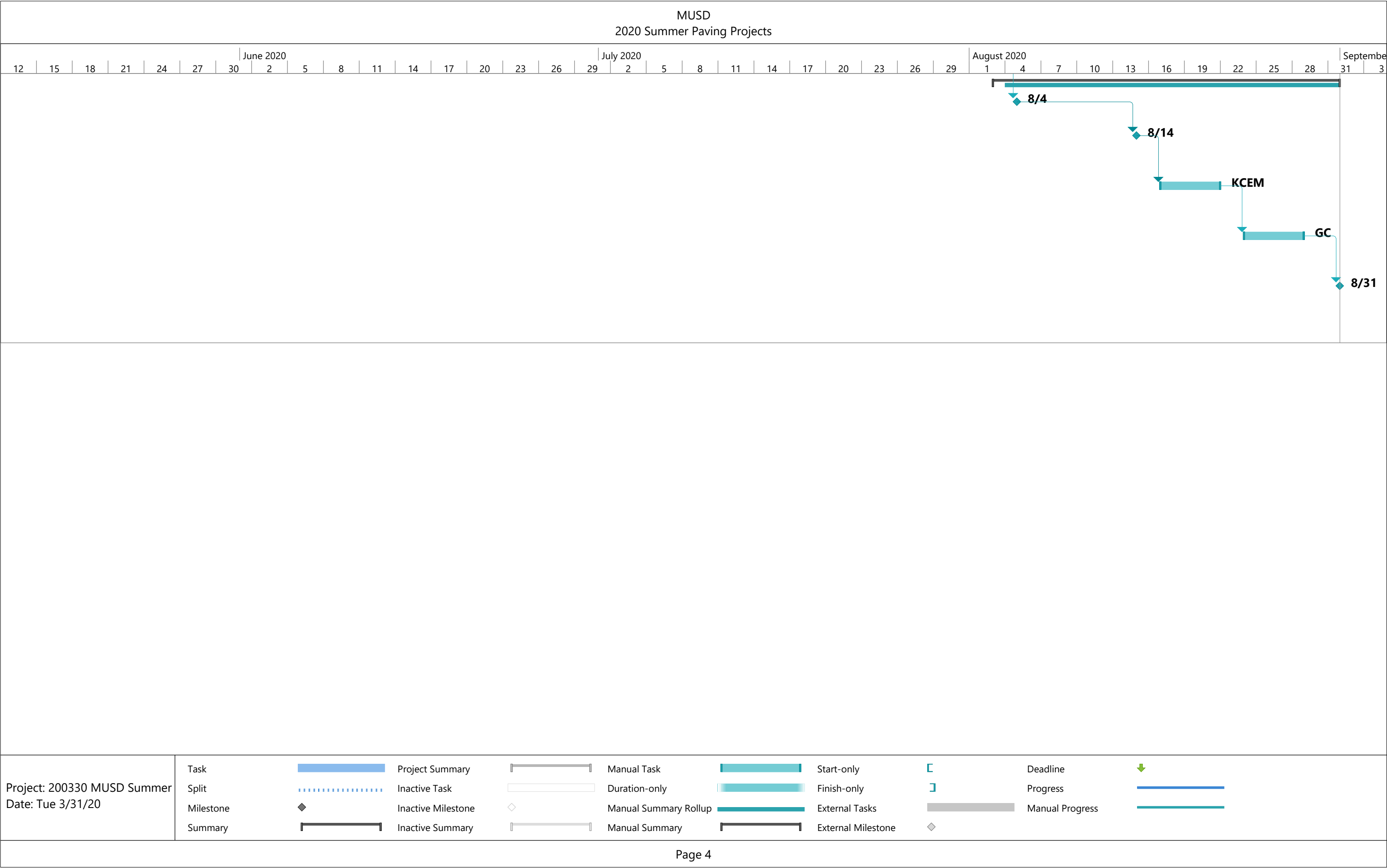
Date: Tue 3/31/20

Task		Project Summary		Manual Task		Start-only		Deadline	
Split		Inactive Task		Duration-only		Finish-only		Progress	
Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress	
Summary		Inactive Summary		Manual Summary		External Milestone			

MUSD  
2020 Summer Paving Projects



Project: 200330 MUSD Summer Date: Tue 3/31/20	Task		Project Summary		Manual Task		Start-only		Deadline	
	Split		Inactive Task		Duration-only		Finish-only		Progress	
	Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress	
	Summary		Inactive Summary		Manual Summary		External Milestone			





MUSD 2020 Summer HVAC Projects																																																		
ID	Task Name	Duration	Start	Finish	Predecessors	Resource Names			March 2020														April 2020														May 2020													
1	MUSD Summer 2020 HVAC Projects	188 days	Mon 3/2/20	Wed 11/18/20		AlfaTech,KCEM,MUSD	24	27	1	4	7	10	13	16	19	22	25	28	31	3	6	9	12	15	18	21	24	27	30	3	6	9	12	15	18	21	24	27												
2	AlfaTech Contract Procurement	16 days	Tue 3/3/20	Tue 3/24/20		AlfaTech,MUSD																																												
3	AlfaTech Contract BOE approval	1 day	Tue 3/24/20	Tue 3/24/20		MUSD																																												
4	Design Phase	35 days	Wed 3/25/20	Tue 5/12/20	3	MUSD,AlfaTech,KCEM																																												
5	Site Visits	5 days	Thu 3/26/20	Wed 4/1/20		MUSD,AlfaTech																																												
6	Design Phase	23 days	Thu 4/2/20	Mon 5/4/20	5	AlfaTech																																												
7	Plan Review	3 days	Tue 5/5/20	Thu 5/7/20	6	MUSD,KCEM																																												
8	Incorporate Plan Comments	3 days	Fri 5/8/20	Tue 5/12/20	7	AlfaTech																																												
9	Bid Phase	51 days	Wed 5/13/20	Wed 7/22/20		AlfaTech,KCEM,MUSD																																												
10	Develop bid packages	4 days	Wed 5/13/20	Mon 5/18/20		KCEM																																												
11	1st Bid advertisment	1 day	Fri 5/15/20	Fri 5/15/20	10FS-2 days	MUSD,KCEM																																												
12	Bid solicitation	7 days	Thu 5/14/20	Fri 5/22/20	11FS-2 days	KCEM																																												
13	2nd Bid advertisement	1 day	Mon 5/25/20	Mon 5/25/20	11FS+5 days	MUSD,KCEM																																												
14	Pre-bid walk - HVAC	1 day	Tue 5/26/20	Tue 5/26/20	11FS+6 days	KCEM,MUSD,AlfaTech																																												
15	Last Day for RFI's	1 day	Fri 6/5/20	Fri 6/5/20	14FS+7 days	KCEM																																												
16	Addendum(s) (If needed)	1 day	Tue 6/9/20	Tue 6/9/20	15FS+1 day	KCEM,AlfaTech																																												
17	Bid Day - HVAC	1 day	Tue 6/16/20	Tue 6/16/20	16FS+4 days	KCEM,MUSD																																												
18	Post Bid Interview - HVAC	1 day	Thu 6/18/20	Thu 6/18/20	17FS+1 day	KCEM																																												
19	Award recommendation - HVAC	1 day	Mon 6/22/20	Mon 6/22/20	18FS+1 day	KCEM																																												
20	BOE award agenda item - HVAC	1 day	Tue 6/23/20	Tue 6/23/20	19	KCEM,MUSD																																												
21	BOE approval (date TBD)	1 day	Tue 7/14/20	Tue 7/14/20	20FS+14 days	MUSD																																												
22	Contract Execution	5 days	Wed 7/15/20	Tue 7/21/20	21	KCEM,MUSD																																												
Project: 200330 MUSD Summe Date: Tue 3/31/20		Task	<div></div>	Project Summary	<div></div>	Manual Task	<div></div>	Start-only	<div></div>	Deadline	<div></div>																																							
		Split	<div></div>	Inactive Task	<div></div>	Duration-only	<div></div>	Finish-only	<div></div>	Progress	<div></div>																																							
		Milestone	<div></div>	Inactive Milestone	<div></div>	Manual Summary Rollup	<div></div>	External Tasks	<div></div>	Manual Progress	<div></div>																																							
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2020 Summer HVAC Projects	

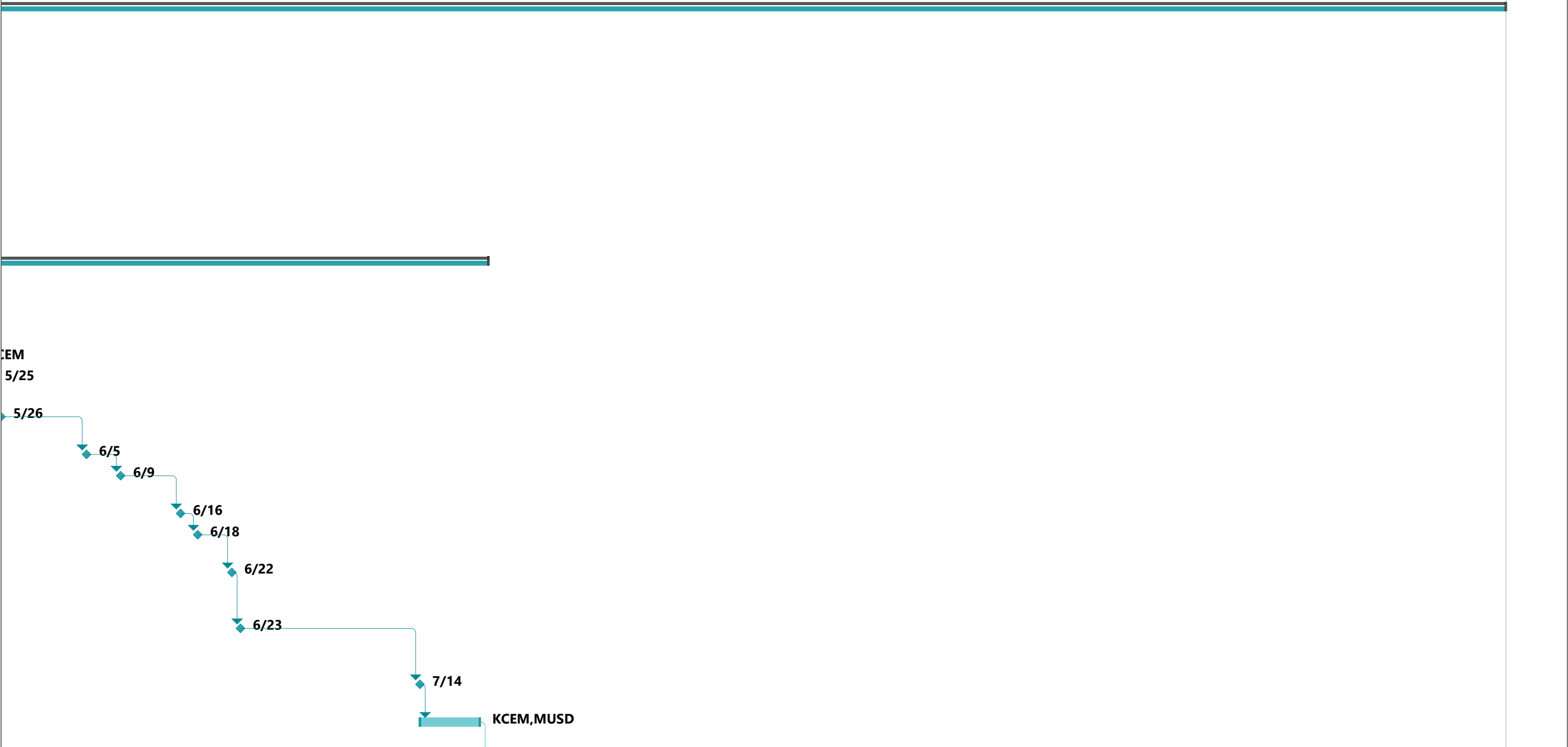
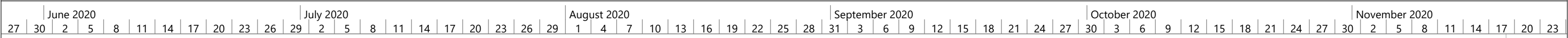
ID	Task Name	Duration	Start	Finish	Predecessors	Resource Names	24		27		March 2020								April 2020							May 2020																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																							
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Date: Tue 3/31/20

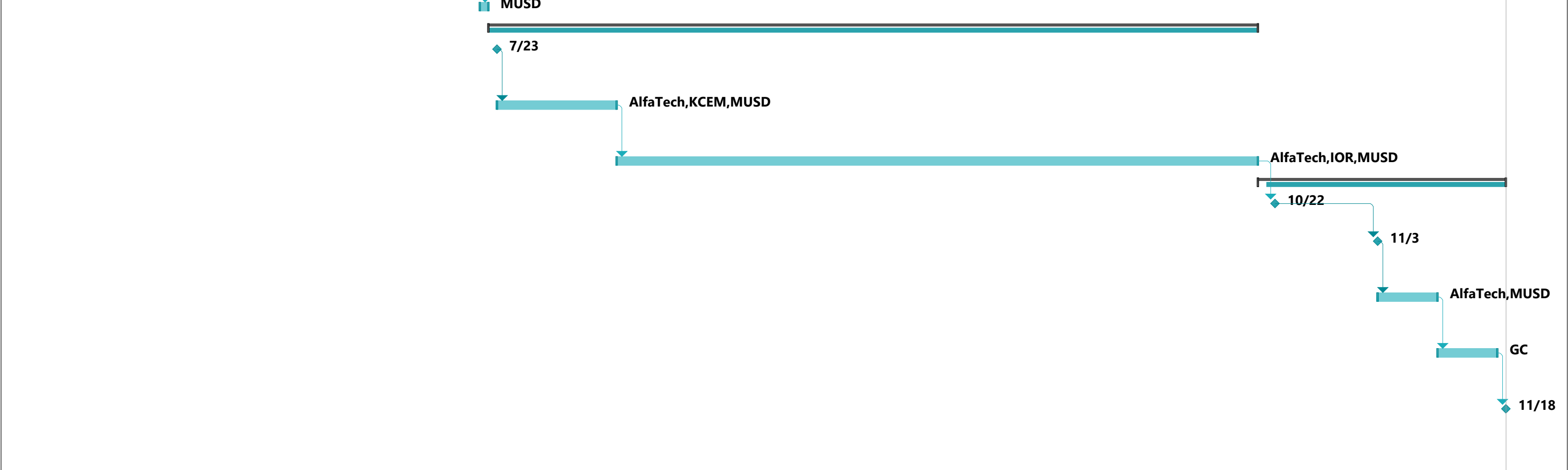
Task		Project Summary		Manual Task		Start-only		Deadline	
Split		Inactive Task		Duration-only		Finish-only		Progress	
Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress	
Summary		Inactive Summary		Manual Summary		External Milestone			

MUSD	
2020 Summer HVAC Projects	



Project: 200330 MUSD Summe Date: Tue 3/31/20	Task		Project Summary		Manual Task		Start-only		Deadline	
	Split		Inactive Task		Duration-only		Finish-only		Progress	
	Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress	
	Summary		Inactive Summary		Manual Summary		External Milestone			

MUSD 2020 Summer HVAC Projects	
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Project: 200330 MUSD Summe

Date: Tue 3/31/20

Task		Project Summary		Manual Task		Start-only		Deadline	
Split		Inactive Task		Duration-only		Finish-only		Progress	
Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress	
Summary		Inactive Summary		Manual Summary		External Milestone			

**EXHIBIT D**  
**FEE SCHEDULE**

**PAYMENT PROVISIONS  
AND  
CRITERIA AND BILLING FOR EXTRA SERVICES**

**Compensation**

1. The Consultant's fee set forth in this Agreement shall be full compensation for all of Consultant's Services incurred in its performance, including, without limitation, all costs for personnel, travel within two hundred (200) miles of the District Office, offices, per diem expenses, printing, providing, or shipping of deliverables in the quantities set forth in **Exhibit A**.
2. The Fee shall not exceed the amount set forth in the Agreement, including all billed expenses, without advance written approval of the District. The Fee shall be paid based upon services percentage completed. ("Fee Schedule").

**Method of Payment**

1. Consultant shall submit monthly invoices on a form and in the format approved by the District. Consultant shall submit these invoices in duplicate to the District via the District's authorized representative.
2. Consultant shall submit to District on a monthly basis documentation showing proof that payments were made to his/her sub-consultants.
3. Upon receipt and approval of Consultant's invoices, the District agrees to make payments on all undisputed amounts within sixty (60) days of receipt of the invoice.

**Payment for Extra Services**

The following Extra Services to the Agreement shall be performed by Consultant if needed and if authorized or requested by the District:

1. Providing deliverables or other items in excess of the number indicated in **Exhibit A**. Before preparing, providing, sending, or invoicing for extra deliverables, Consultant shall inform the District that expected deliverables may be in excess of the number indicated in **Exhibit A**, so that District can procure the additional deliverables itself or direct Consultant to procure the deliverables at District's expense or on District's account at a specific vendor.
2. Providing services as directed by the District that are not part of the Services of this Agreement.
3. Providing services as an expert and/or witness for the District in any mediation, arbitration, and/or trial in which the Consultant is (1) not a party, and (2) did not in any way cause the dispute that is being adjudicated.
4. 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.

<b><u>Job Title</u></b>	<b><u>Hourly Rate</u></b>
Principal in Charge	\$
Director	\$
Consultant(s)	\$
Administrative Personnel	\$
Other	\$
Other	\$

The mark-up on any approved item of Extra Services shall **NOT EXCEED FIVE PERCENT (5%)**.

**EXHIBIT E**  
**CERTIFICATIONS**

**FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION**

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Independent Consultant Agreement for Professional Services ("Agreement"):

☐ **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]** Consultant's employees and Subconsultants will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Consultant's employees and Subconsultants so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Consultant for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 (c))

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

District Representative's Name and Title: \_\_\_\_\_

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

☐ The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Consultant's services under this Agreement and Consultant certifies its compliance with these provisions as follows: *"Consultant certifies that the Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Consultant's employees, Subconsultants, subcontractors, agents, and Subconsultants' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant, who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto."*

☐ Consultant's services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:

\_\_\_\_\_ The installation of a physical barrier at the worksite to limit contact with pupils.

\_\_\_\_\_ Continual supervision and monitoring of all Consultant's on-site employees of Consultant by an employee of Consultant, \_\_\_\_\_, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

\_\_\_\_\_ Surveillance of Employees by District personnel. **[TO BE COMPLETED BY DISTRICT]**

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

District Representative's Name and Title: \_\_\_\_\_

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

**[TO BE COMPLETED BY CONSULTANT]** I am a representative of the Consultant entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant.

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

Name of Consultant or Company: \_\_\_\_\_

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

Print Name and Title: \_\_\_\_\_

**CONTRACTOR FINGERPRINT CERTIFICATION**

\_\_\_\_\_ (Consultant) certifies that pursuant to Education Code Section 45125.1, has conducted criminal background checks, through the California Department of Justice, of all employees providing services to the Milpitas Unified School District, and that none have been convicted of serious or violent felonies, as specified in Penal Code Sections 1192.79(c) and 667.5(c), respectively.

As further required by Education Code 45125.1, below is a list of the names of the employees of the undersigned who may come in contact with pupils. Failure to comply with this law may result in, at District's sole discretion, termination of any agreement entered into between District and Contractor.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**Below is a List of Employees Who May Come In Contact With Pupils**

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____