

AGREEMENT FOR PROGRAM MANAGEMENT SERVICES

SAN RAFAEL CITY SCHOOLS

AND

_____, 2016

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AGREEMENT FOR PROGRAM MANAGEMENT SERVICES

This Agreement for Program Management Services ("Agreement") is made as of the _____ day of December 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 _____ a [state and type of business entity] ("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 Parties agree that the Program Manager shall not be eligible to undertake construction management administration of projects that comprise the Program.

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). Program Manager shall invoice for each component separately and District shall compensate Program Manager for each component separately on a proportionate basis based on the level and scope of work completed for each component.

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 6.1, payable as set forth in Article 6 of **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. Scope, Responsibilities And Services Of Program Manager

- 2.1. **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.
- 2.2. Program Manager's Services shall include, but not be limited to:
- 2.2.1. Providing the District with budget recommendations, based on documented estimates, for the Projects. The Board shall make the final decisions as to all budgets.
- 2.2.2. 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.

- 2.3. 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.
- 2.4. 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.
- 2.5. 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.
- 2.6. 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."**
- 2.7. 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.
- 2.8. 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.

- 2.9. 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 3. Program Manager Staff

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

Principal In Charge:	_____
Program Director:	_____
Program Manager:	_____
Asst. Program Manager:	_____
Other:	_____
Other:	_____
Other:	_____

- 3.3. 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 personnel.
- 3.4. 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.
- 3.5. 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 4. 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 5. Program Budget; Construction Cost Budgets

- 5.1. 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.
- 5.2. 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.
- 5.3. 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.
- 5.4. 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.
- 5.5. 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.
- 5.6. 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.
- 5.7. 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.

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Article 6. Fee And Method Of Payment

District shall pay Program Manager

an amount equal to _____ dollars
(\$_____) for all services contracted for
under this Agreement based on the Fee Schedule set forth in **Exhibit
"D."**

- 6.1. District shall pay Program Manager the Fee pursuant to the provisions herein and in **Exhibit "D."**
- 6.2. Program Manager shall bill its work under this Agreement by time and materials in accordance with **Exhibit "D."**
- 6.3. 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.
- 6.4. 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 7. Payment for Extra Services

- 7.1. 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.
- 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 Program Manager to the District for written approval before proceeding with any Extra Services.

Article 8. Ownership Of Data

- 8.1. All of the work product of Program Manager, prepared or generated, in connection with this Agreement is the property of the District.
- 8.2. 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.
- 8.3. 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.

- 8.4. 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 9. Termination Of Contract

- 9.1. 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.
- 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, 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.
- 9.3. 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.
- 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 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.

- 9.6. 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 10. Indemnity

- 10.1. 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.
- 10.2. 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.
- 10.3. 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 11. Conduct on Project Sites and Fingerprinting

- 11.1. Unacceptable and/or loud language will not be tolerated. "Cat calls" or other derogatory language toward students or public will not be allowed.
- 11.2. 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.
- 11.3. 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 12. Responsibilities of the District

- 12.1. 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.
- 12.2. The District shall provide to the Program Manager as complete information as is available to District regarding the District's requirements for the Project.
- 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 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.
- 12.5. The District, its representatives, and consultants shall communicate with the Contractor(s) either directly or through the Program Manager or Construction Manager.
- 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 Program Manager or Construction Manager.
- 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 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 or 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 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.
- 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 Program Manager, or by its employees, even though such equipment be furnished or loaned to Program Manager by District.
- 13.4. 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 14. Insurance

- 14.1. 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).
- 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.** 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.
 - 14.2.2. **Commercial Automobile Liability, Any Auto.** One million dollars (\$1,000,000) 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 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.

- 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 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.
- 14.5. **Other Insurance Provisions:** The insurance policies required above 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 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.
 - 14.5.3. 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.
 - 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 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.
 - 14.5.6. 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.

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: Program Manager 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

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 16. 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.

Article 17. 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 18. 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 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

- 20.1. 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.
- 20.2. 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 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. 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.
- 22.2. 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.

- 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 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.
- 22.4. 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).
- 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, 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.
- 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 Program Manager

- 23.1. 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.
- 23.2. 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.

- 23.3. 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 24. 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 25. 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: _____
Facsimile: _____
Email: _____

Attn: _____

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:

Telephone: _____
Facsimile: _____
Email: _____

Attn: _____

With a copy to:

Telephone: _____
Facsimile: _____

Article 26. 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 27. Other Provisions

- 27.1. 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.
- 27.2. 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.
- 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 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.

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

SAN RAFAEL CITY SCHOOLS

Date: _____, 2016

Date: _____, 2016

By: _____

By: _____

Title: _____

Title: _____