

**AGREEMENT TO PREPARE BOND PROGRAM MASTER PLAN
BETWEEN
FREMONT UNION HIGH SCHOOL DISTRICT
AND**

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AGREEMENT TO PREPARE BOND PROGRAM MASTER PLAN

This Agreement to Prepare Bond Program Master Plan ("Agreement") is made as of the _____ day of September, 2016, between **Fremont Union High School District** ("District") and _____ ("Consultant") (collectively, the "Parties"), related to the preparation of a conceptual Master Plan for others to design and construct additions to the King's Academy Campus, formerly the site of Sunnyvale High School ("Program").

The Master Plan may include multiple components. Any one of the components or combination thereof may be changed, including terminated, in the same manner as the Master Plan, 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. **Consultant:** The entity listed in the first paragraph of this Agreement, including all Consultant(s) to the Consultant.
 - 1.1.3. **Subconsultant(s):** Any and all consultant(s), subconsultant(s), subcontractor(s), or agent(s) to the Consultant.
 - 1.1.4. **Extra Services:** Extra Services are defined herein under the Article entitled "Payment for Extra Services."
 - 1.1.5. **Fee:** The Consultant's Fee is defined herein, payable as set forth herein and in **Exhibit "B."**
 - 1.1.6. **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 Master Plan.

Article 2. SCOPE, RESPONSIBILITIES AND SERVICES OF CONSULTANT

- 2.1. **Scope:** Consultant shall provide the Services described herein and under **Exhibit "A"** for the Master Plan.
- 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.
- 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 Services 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 Services in the following capacities:

<u>Job Title</u>	<u>Name</u>
Principal in Charge / Community Facilitator	
Project Manager / Needs Assessment Coordinator	
Planner and Sustainability Specialist	
Quality Control Director	
Interior Designer	
Structural Engineer	

- 3.3. The Consultant agrees that the following Subconsultants shall be associated with the Services in the following capacities:

<u>Job Title</u>	<u>Name</u>	<u>Firm</u>
Mechanical and Plumbing Engineer		
Electrical Engineer		
Civil Engineer		
Cost Estimator		

- 3.4. The Consultant shall not change any of the key personnel and subconsultants listed above without prior written approval by District, unless said personnel and subconsultants cease to be employed by Consultant. In either case, District shall be allowed to interview and approve replacement personnel.
- 3.5. If any designated lead or key person or subconsultant fails to perform to the satisfaction of the District, then upon written notice the Consultant shall immediately remove that person or subconsultant from the Master Plan 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 or subconsultants for any Consultant must also be designated by the consultant and are subject to all conditions previously stated in this paragraph.
- 3.6. Consultant represents that the Consultant and Subconsultants 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. TERM

Unless terminated or otherwise cancelled as permitted herein, the term of this Agreement shall be from _____ to _____.

Article 6. FEE AND METHOD OF PAYMENT

- 6.1. District shall pay Consultant an amount not to exceed _____ Dollars (\$ _____) for all services contracted for under this Agreement and based on the provisions and Fee Schedule attached to **Exhibit "B."**
- 6.2. 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 "B."**

Article 7. PAYMENT FOR EXTRA SERVICES

- 7.1. District-authorized Services outside of the scope in **Exhibit "A"** or District-authorized reimbursables 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 Services or after termination of this Agreement, Consultant shall deliver to District a complete set of the planning records, including without limitation all documents generated by Consultant and copies of all documents exchanged with or copied to or from all other planning participants. All records shall be indexed and appropriately organized for easy use by District personnel. All 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 Services 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, all of the Services, or a portion of the Services, for its own convenience. The Consultant, upon written notice from the District of such termination, shall immediately cease performing the Services as indicated in that notice. In the event of a termination for convenience, Consultant may invoice District and District shall pay all undisputed invoice(s) for Services performed until the notice of termination.

This shall be the only amount(s) potentially owing to Consultant 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.

Article 10. INDEMNITY

- 10.1. To the furthest extent permitted by California law and in accordance with California Civil Code section 2782.8, 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, Subconsultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Master Plan, or this Agreement. This indemnity excludes Consultant's liability as to the active or sole negligence or willful misconduct of the District.
- 10.2. To the furthest extent permitted by California law and in accordance with California Civil Code section 2782.8, 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, Subconsultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Master Plan, or this Agreement. District shall have the right to accept or reject any legal representation that Consultant proposes to defend the Indemnified Parties.
- 10.3. Consultant's duty to indemnify and defend under this Agreement is not limited in any way by the amount or type of damages or compensation payable to Consultant or its Subconsultants under applicable policies of insurance, workers' compensation acts, disability benefits acts, or other employee benefits acts. Consultant's duty to indemnify and defend under this Agreement shall apply during the term of this Agreement and shall survive any expiration or termination of this Agreement until any such Claim(s) are barred by the applicable statute of limitations and is in addition to any other rights or remedies that the District may have under the law or under this Agreement.

Article 11. FINGERPRINTING AND BEHAVIOR

- 11.1. Unless the District has determined pursuant to Education Code section 45125.2 that on the basis of scope of Services in this Agreement that Consultant and its Subconsultants 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 Subconsultants or 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 Subconsultants 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 Master Plan 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. Derogatory language toward students, staff, visitors or the 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 Master Plan.
- 12.3. The District shall designate an officer, employee and/or other authorized representatives to act on the District's behalf with respect to the Master Plan. The District's representative for the Master Plan 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 the negligence 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 Services 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 Services hereunder by the Consultant, their agents, representatives, employees and Subconsultant(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 and two million dollars (\$2,000,000) aggregate limit 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.** 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.
 - 14.2.4. **Employer's Liability.** One million dollars (\$1,000,000) per accident for bodily injury or disease.
 - 14.2.5. **Professional Liability.** This insurance shall cover the Consultant and his/her Subconsultant(s) for five million dollars (\$5,000,000) per claim and five million dollars (\$5,000,000) aggregate limit subject to no more than two hundred thousand dollars (\$200,000) 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 two hundred thousand dollars (\$200,000) 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, Subconsultants, 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, national origin, ancestry, religion, age, physical disability, sex, or sexual orientation 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

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. 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 Services of this Agreement.
- 23.3. 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 agrees to fully comply with and to require its Subconsultant(s) to fully comply with all applicable prevailing wage requirements of the California Labor Code.

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

Communications between the Parties to this Agreement may be sent to the following addresses. The Parties, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent

<u>District</u>	<u>Architect</u>
Fremont Union High School District 589 W. Fremont Avenue Sunnyvale, CA 94087 Attn: Graham Clark, Assoc. Superintendent	

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 or programs that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the Act). This Master Plan 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 MASTER 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. 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 construction program planning 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.
- 27.2. 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.

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

Dated: _____, 2016

Dated: _____, 2016

Fremont Union High School District

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF CONSULTANT

Consultant shall provide all professional services necessary for completing the following:

1. BASIC SERVICES

Consultant agrees to provide the Services described below.

- 1.1. Be responsible for the professional quality and technical accuracy of all studies, reports, projections, specifications and other services furnished by Consultant under the Agreement as well as coordination with all, studies, reports, designs, drawings and other information provided by District. Consultant shall, without additional compensation, correct or revise any errors or omissions in its studies, reports, projections, specifications and other services.
- 1.2. Coordinate Services with the District, the District's other consultants and Subconsultants.
- 1.3. Prepare written communication for distribution by District.

2. DATA COLLECTION

Consultant shall perform the following investigatory services:

- 2.1. **District and Site Information.** Thoroughly review and analyze all information and documentation provided by the District which shall include, if available:
 - 2.1.1. Physical characteristics of District sites to be considered in planning;
 - 2.1.2. Previous reports, studies, master planning documents and program documents;
 - 2.1.3. Legal limitations and utility locations for the project site(s);
 - 2.1.4. Written legal description(s) of the project site(s);
 - 2.1.5. Grades and lines of streets, alleys, pavements, and adjoining property and structures;
 - 2.1.6. Rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries and contours of the project site(s);
 - 2.1.7. Locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and
 - 2.1.8. Information concerning available utility services and lines, mechanical and other services, both public and private, above and below grade, including inverts and depths.
 - 2.1.9. Surveys, reports, as-built drawings; and
 - 2.1.10. Educational Master Plan(s).
 - 2.1.11. Grade level configurations (K-5; 6-8; 9-12 or Schools of Choice).

- 2.2. **Additional Information.** If Consultant determines that the information or documentation the District provides is insufficient for purposes of planning or if the Consultant requires other information that the District has not provided, the Consultant shall request that the District acquire that information at the soonest possible time after Consultant becomes aware that this additional information is needed. If the Parties mutually agree, this additional information and service shall be procured through the Consultant, who may invoice the District for those services as Extra Services.

3. JURISDICTIONAL MEETINGS

3.1. Meetings

- 3.1.1. **Progress Meetings.** Organize, conduct, and take minutes of meetings with District's staff to discuss goals, process, parameters, phasing of planning process, experiences at the sites, coordinating discussions at all District sites to be considered in planning and all other necessary information.
- 3.1.2. **Number of Meetings.** Consultant shall attend no more than a total of eleven (11) meetings. No more than three (3) of these meetings will be public community informational meetings to receive input from the community regarding its wishes and expectations regarding the program and the site.
- 3.1.3. **Responses to Inquiries.** Consultant shall always be prepared to answer questions and issues from District staff and site staff.
- 3.1.4. **Meeting Logs and Minutes.** Consultant shall maintain a log and take detailed minutes of all meetings, site visits or site observations held in conjunction with the program development, with documentation of major discussion points, observations, decisions, questions or comments. These shall be furnished to the District and/or its representative.
- 3.1.5. **Documentation.** As required, Consultant shall provide at no additional cost to the District copies of all documents or other information needed for each meeting, site visit, or workshop.
- 3.1.6. **Attendance.** The Consultant and its appropriate Subconsultant(s) shall attend these meetings.
- 3.1.7. **Scope of Meetings.** During each of these meetings, the Consultant shall:
- 3.1.7.1. Identify and review pertinent information and/or documentation necessary from the District for the completion of the planning for the component of the program related to that specific site and project(s).
- 3.1.7.2. At the meetings at each site, review and explain the overall program goals, general approach, tasks, work plan and procedures and deliverable products of the program related to that specific site and project(s).

4. SCOPE VALIDATION/SITE WALKS

- 4.1. **Initial Site Visit(s).** Take initial site visit with District staff of District site to be considered in planning. Consultant shall take an initial visual inventory and document the existing conditions.

- 4.2. **Site Meetings.** Organize, conduct, and take minutes of meetings with site personnel. These meetings will be to discuss site personnel’s goals, experiences at the site, and other information.
- 4.3. **Photographs.**
- 4.4. **Prepare Documentation of Findings/Base Plans.**
- 4.5. **Prepare Narrative.**

5. MASTER PLANNING/MASTER PLAN DEVELOPMENT

- 5.1. **Development of Master Plan.** The Consultant shall prepare for the District’s review of program as follows:
 - 5.1.1. **Guidelines.** General guidelines around which and within which each project in the Program is to be planned, design, approved, procured, constructed and closed out. Incorporate all data that Consultant has analyzed and gather that is pertinent to each project and/or site within the Program.
 - 5.1.2. **DSA Status.** Identify all past DSA codes, numbers, and projects associated with each site and determine status of closeout (with certification) for each.
 - 5.1.3. **Regulatory Constraints.** Identify functional needs, directives and constraints imposed by applicable regulatory codes.
 - 5.1.4. **Existing Facilities.** Analyze existing site and facilities (I.e. vehicular, circulation, zoning)
 - 5.1.5. **Current Site Plan.** Develop analysis graphics for review and discussion. This should include an existing conditions footprint map or drawing for each site that can be used as a basis for a schematic design.
 - 5.1.6. **Project List and Facility Priorities.** Prepare a project list for site, identifying all facilities planning priorities and recommended prioritization. This should include prioritization of projects, re-purposing current facilities and relocation (if needed) for programs. Consultant shall ensure parity at each site. At a minimum, this facilities Master Plan shall include:
 - 5.1.6.1. Program project list.
 - 5.1.6.2. Preliminary planning options in all components of program and identify and explain any “preferred” options.
 - 5.1.6.3. A space program for facilities planning that reflects current trends and to house anticipated program.
 - 5.1.6.4. Sequencing of projects and scopes of work.
 - 5.1.6.5. Recommendation on necessary housing to accomplish alignment with the Governing Board’s desired grade configurations of K-5; K-8; 6-8; 9-12, and 5-12 “schools of choice” to meet community requests.

- 5.1.6.6. Direct linkage between the identified projects and the budgets (see below), or preparation and presentation of these items together.
- 5.1.6.7. Additional school site locations in order to serve the population growth of the next seven (7) years (identified by grade level configuration).
- 5.1.7. **State-Funding Information.** Develop strategies to maximize state and federal funding possibilities, including identification of specific programs and potential amounts.

6. MODEL CLASSROOM AND EDUCATIONAL SPECIFICATIONS

- 6.1. **Meetings.** Consultant shall Organize and conduct three (3) meetings with educators to discuss model classrooms and take minutes of those meetings.
- 6.2. **Vendor Outreach.** Consultant shall prepare plans and perform vendor outreach for the model classrooms.
- 6.3. **Education Specifications.** Prepare District standard to be used by committees, planners, and architects to guide the design of modernization and new construction, based on the District’s goals, objectives, policies, and community input that determine the education program. The Education Specifications shall link the design of District facilities to the achievement of the District’s educational program. Consultant shall coordinate its education specification efforts with District staff, school principals, community, and union representatives, if applicable, to develop the Education Specifications. The Education Specifications shall comply, without limitation, with California Code of Regulations, Title 5, section 14030 and the California Department of Education’s guidelines. This scope will also include the conducting of the educational specification committee process and shall be conducted by an individual with extensive experience in the field and educational specification process.

7. ESTIMATED COSTS / VALIDATION

- 7.1. **Budgets**
 - 7.1.1. Construction Budget: The total amount indicated by the District for a project plus all other costs, including design, construction, administration, financing, and all other costs.
 - 7.1.2. Construction Cost Budget: The total cost to District of all elements of a project designed or specified by an architect, as adjusted at the end of each design phase in accordance with this Agreement. The Construction Cost Budget does not include the compensation of construction or program manager(s), the architect, the consultant, the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District.
 - 7.1.3. Consultant shall develop and provide a Construction Budget and a Construction Cost Budget within the parameters provided by the District. Consultant shall prepare these budgets with the following parameters and requirements:
 - 7.1.4. All costs are to be based on current prices, with escalation rate and duration clearly identified as a separate line item.
 - 7.1.5. Format of the Construction Cost Budget shall be in a building systems format (e.g., foundations, substructure, structural system, exterior wall enclosure, window systems,

etc.) for new buildings, and summarized by the Construction Specification Institute (CSI) category for buildings being modernized.

- 7.1.6. Contingencies for design, bidding, and construction are to be included as individual line items, with the percentage and base of calculation clearly identified.

8. FACILITIES MASTER PLAN DOCUMENTS

- 8.1. **Initial Draft.** Consultant shall provide to the District two (2) hard copies and one (1) copy in electronic format of a draft of all of the documents required above, including the following:
 - 8.1.1. A draft Master Plan (Include narrative explaining each portion);
 - 8.1.2. A draft Construction Budget;
 - 8.1.3. A draft Construction Cost Budget;
 - 8.1.4. **Presentation.** Consultant along with any involved Subconsultant(s) shall present and review with District staff and, if directed, with the District's governing board, the draft planning documents.
- 8.2. **Final Draft.** Based on all information and recommendations received in response to the initial draft, Consultant shall provide to the District two (2) hard copies and one (1) copy in electronic format of a final version of all of the documents required above, including the following:
 - 8.2.1. A final Master Plan (Include narrative explaining each portion);
 - 8.2.2. A final Construction Budget;
 - 8.2.3. A final Construction Cost Budget;
 - 8.2.4. **Presentation.** Consultant along with any involved Subconsultant(s) shall present and review with District staff and with the District's governing board, the final planning documents.
- 8.3. **Revised Final Draft.** Based on all information and recommendations received in response to the final draft, Consultant shall provide to the District two (2) hard copies and one (1) copy in electronic format of a revised final version of all of the documents required above, including the following:
 - 8.3.1. A revised final Master Plan (Include narrative explaining each portion);
 - 8.3.2. A revised final Construction Budget;
 - 8.3.3. A revised final Construction Cost Budget;
 - 8.3.4. **Presentation.** Consultant along with any involved Subconsultant(s) shall present and review with District staff and with the District's governing board, the revised final planning documents.
- 8.4. **Governing Board Meetings.** Consultant acknowledges that the District's governing board must approve all final planning documents. Consultant shall, at the District's direction, attend District

governing board meeting(s) and present the Consultant's planning documents to the District's governing board for review, consideration and approval.

EXHIBIT "B"

**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 as indicated below (“Fee Schedule”).

PERCENTAGE OF TOTAL FEE BY TASK	
TASK	TASK AMOUNT
Task 1. Data Collection	_____ % (max. %)
Task 2. Jurisdictional Meetings	_____ % (max. %)
Task 3. Existing Site Walk & Scope Validation	_____ % (max. %)
Task 4. Master Planning / MASTER Priorities	_____ % (max. %)
Task 5. Demographics Information and Existing Capacity Calculations	_____ % (max. %)
Task 6. Model Classroom / Educational Specifications	_____ % (max. %)
Task 7. Estimated Costs / Validation	_____ % (max. %)
Task 8. Master Plan Document	_____ % (max. %)
Task 9. Final School Site Presentations/ Review Draft MASTER	_____ % (max. %)
Task 10. Presentation to Board and Board’s Final Approval of Final Master Plan	10 % (max. %)

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.

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Principal in Charge	
Associate Principal	
Senior Associate / Director of Health Care Planning / Director of Accessibility	
Associate/Director of Planning/Director of Sustainability	

<u>ARCHITECTURAL SERVICES – CLASSIFICATION</u>	<u>HOURLY RATE</u>
Project Director	
Senior Project Manager	
Specifications Writer	
Senior Architect	
Project Manager	
Project Architect	
Senior Designer	
Staff Architect	
Project Designer	
Staff Designer	
Designer	
Specifications Technician	

<u>INTERIOR DESIGN SERVICES – CLASSIFICATION</u>	<u>HOURLY RATE</u>
Senior Project Manager	
Project Manager	
Senior Designer	
Project Designer	
Staff Designer	
Designer	

<u>STRUCTURAL ENGINEERING SERVICES – CLASSIFICATION</u>	<u>HOURLY RATE</u>
Project Director	
Senior Project Manager	
Senior Engineer/Project Manager	
Project Engineer	
Staff Engineer	
Senior Drafter	
Project Designer	
Project Drafter	
Staff Designer	
Designer	
Staff Drafter	

Drafter	
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<u>PROJECT SUPPORT SERVICES – CLASSIFICATION</u>	<u>HOURLY RATE</u>
Graphics Creative Director	
Senior Graphics Designer	
Graphic Designer	
Senior Project Coordinator	
Project Coordinator	
Staff Technician	

The mark-up on any approved item of Extra Services shall not exceed **five percent (5%)**.

EXHIBIT "C"

SCHEDULE OF SERVICES OF CONSULTANT

1. Consultant shall complete all work and services required per the Schedule of Services after written authorization from the District to proceed.
2. The durations stated in the Schedule of Services shall include the review periods required by the District.
3. All times to complete tasks set forth in this Exhibit are of the essence, as per the Agreement. If delays in the Schedule of Services are imposed by the District's inability to comply with requested meeting schedules, Consultant shall maintain the right to request an adjustment in the Schedule of Services if deemed necessary to meet the deadlines set forth in this Exhibit. If approved, such extensions shall be authorized in writing by the District.
4. The Schedule of Services shall be as indicated below

TASK	DATE TASK TO BE COMPLETED
Task 1. Data Collection	
Task 2. Jurisdictional Meetings (Total of Eight (8) Core Group Meetings and Two (2) Public Meetings	
Two (2) Core Group Meetings	
Two (2) Core Group Meetings	
Two (2) Core Group Meetings	
Two (2) Core Group Meetings	
Three (3) Public Meetings	
Task 3. Existing Site Walk & Scope Validation	
Task 4. Master Planning / MASTER Priorities	
Task 5. Demographics Information and Existing Capacity Calculations	
Task 6. Model Classroom / Educational Specifications	
Task 7. Estimated Costs / Validation	
Task 8. Master Plan Document	
Task 9. Final School Site Presentations/ Review Draft MASTER	
Task 10. Presentation to Board and Board's Final Approval of Final Master Plan	

EXHIBIT "D" - 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: _____

ROOFING CONTRACT FINANCIAL INTEREST CERTIFICATION
(Public Contract Code section 3006)

CONTRACT NO.: _____ between Fremont Union High School District ("District" or "Owner") and _____ ("Consultant") ("Contract" or "Project").

I _____, _____
Name Name of Consultant

certify that I have not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with the roof project contracts on this program. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Furthermore, I _____, _____
Name Name of Consultant

certify that I do not have, and throughout the duration of the contract, I will not have, any financial relationship in connection with the performance of this contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I _____, _____
Name Name of Consultant

have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract:

Name of firm ("Firm"): _____

Mailing address: _____

Addresses of branch office used for this project: _____

If subsidiary, name and address of parent company: _____

I certify that to the best of my knowledge, the contents of this disclosure are true, or are believed to be true.

Date: _____

Proper Name of Consultant: _____

Signature: _____

Print Name: _____

Title: _____