

**Instructions / Face Sheet for
INDEPENDENT CONSULTANT AGREEMENT FOR
COMMISSIONING AGENT SERVICES**

Contract Number: _____
Funding Source: _____
Budget Number: _____
Site/Department: _____
Program Responsibility: _____

The District employee that is providing the attached Independent Consultant Agreement for Construction-Related Professional Services should first do the following:

- 1. Determine which of the following statutory provisions District is relying on in entering into this contract:**
 - **If Consultant is furnishing architecture, landscape architecture, engineering, environmental services, land surveying, or construction management, then Government Code section 4529.12 requires District to procure contract through a fair, competitive selection process (e.g., by obtaining proposals, using a request for proposal or request for qualification process).**
 - **If Consultant is furnishing special services and advice in financial, economic, accounting, engineering, legal or administrative matters, and those persons are specially trained and experienced and competent to perform the special services required, then Government Code section 53060 authorizes District to procure contract through direct negotiation.**
 - **If Consultant is furnishing professional services requiring "specialized knowledge, training, or skill, usually of a mental or intellectual nature," then Public Contract Code section 20111, subd. (d), authorizes District to procure a contract through direct negotiation.**
- 2. Review the insurance requirements for District and revise the insurance provisions of the agreement accordingly.**
- 3. Review the forms under section 3 and determine which of those documents should be attached to the agreement.**
- 4. Completely fill in all blanks and delete the unused options in the agreement.**
- 5. Ensure there is an accurate and complete description of Consultant's Scope of Services.**
- 6. Require Consultant to complete the following before it begins working under the Agreement:**
 - **All required certificates and documents, including insurance documents.**
 - **All information regarding Consultant located after the signature block.**
- 7. If applicable, contract for construction over \$25,000 or for maintenance over \$15,000 must electronically file PWC-100 form with the Department of Industrial Relations within thirty (30) days after award of contract or before contractor has workers employed upon the public work, whichever is sooner.**

DO NOT INCLUDE THIS SHEET WITH FINAL EXECUTED CONTRACT

**INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES
(COMMISSIONING AGENT)**

This Independent Consultant Agreement for Building Commissioning Services ("Agreement") is made and entered into as of the _____ day of _____, 202____ by and between the Alum Rock Union School District, ("District") and _____ ("Consultant"), (together, "Parties").

WHEREAS, Public Contract Code section 20111, subdivision (d), provides that professional services, requiring specialized knowledge, training, or skill, are not subject to public bidding requirements; and

WHEREAS, Government Code section 53060 authorizes District to contract with and employ any person(s) for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters through direct negotiation if those persons are specially trained and experienced and competent to perform the special services required; and

WHEREAS, District duly determined that it needs some or all of the services (collectively, "Services") to be provided pursuant to this Agreement; and

WHEREAS, Consultant is specially trained, experienced, and competent to perform the Services required by District, as needed on the basis set forth in this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** Consultant shall provide building commissioning services as further described in **Exhibit A**, attached hereto and incorporated herein by this reference ("Services").
2. **Term.** Consultant shall commence providing services under this Agreement on _____, 20____ and will diligently perform as required and complete performance by _____, 20____ ("Term"), unless this Agreement is terminated and/or otherwise cancelled prior to that time.
3. **Submittal of Documents.** Consultant shall not commence the Services under this Agreement until Consultant has submitted and District has approved the documents, certificate(s) and affidavit(s), and endorsement(s) of insurance required as indicated below:

- Signed Agreement
- Workers' Compensation Certification
- Prevailing Wage Certification
- Fingerprinting/Criminal Background Investigation Certification
- Insurance Certificates and Endorsements
- W-9 Form
- Other: _____

4. **Compensation.** District agrees to pay Consultant for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed _____ Dollars (\$_____). District shall pay Consultant according to the following terms and conditions:

4.1. Payment for the Services shall be made for all undisputed amounts based upon the delivery of the work product as determined by District. Payment shall be made within thirty (30) days after Consultant submits an invoice to District for Services actually completed and after District's written approval of the Services, or the portion of the Services for which payment is to be made. The schedule of deliverable Services is as follows:

4.1.1.	_____	_____
4.1.2.	_____	_____
4.1.3.	_____	_____
4.1.4.	_____	_____
4.1.5.	_____	_____

4.2. The Services shall be performed at the hourly billing rates and/or unit prices included in **Exhibit B**. If hourly billing applies, the itemized invoice shall reflect the hours spent by Consultant in performing its Services pursuant to this Agreement.

4.3. If Consultant works at more than one site, Consultant shall invoice for each site separately.

5. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows:

5.1. _____.

6. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing services for District, except as follows:

6.1. _____.

7. **Independent Contractor.** Consultant represents and warrants that Consultant is an independent contractor or business entity that is: (i) free from the control and direction of District in connection with the performance of the Services, (ii) performing Services that are outside the usual course of District's business, and (iii) customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Services performed, District being interested only in the results obtained. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of District, and are not entitled to benefits of any kind or nature normally provided employees of District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees.

8. **Performance of Services.**

8.1. **Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and

currently accepted principles and practices of its profession for services to California school districts.

- 8.2. **Due Diligence.** Consultant shall carefully study and compare all documents, findings, and other instructions and shall at once report to District, in writing, any error, inconsistency, or omission that Consultant or its employees may discover. Consultant shall have responsibility for discovery of errors, inconsistencies, or omissions.
- 8.3. **Meetings.** Consultant and District agree to participate in meetings to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.
- 8.4. **District Approval.** The Services completed herein must meet the approval of District and shall be subject to District's general right of inspection and supervision to secure the satisfactory completion thereof.
- 8.5. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various Projects for District. Consultant shall obtain the approval of District prior to the commencement of a new Project.
9. **Deliverables.** Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission.
10. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant shall permit District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.
11. **Disputes.** In the event of a dispute between the parties as to performance of the Services, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute in good faith. Pending resolution of the dispute, Consultant agrees it will neither rescind the Agreement nor stop the performance of the Services, but will allow determination by the court of the State of California, in the county in which District's administration office is located, having competent jurisdiction of the dispute. Disputes may be determined by mediation if mutually agreeable, otherwise by litigation. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, Consultant shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to Consultant's right to bring a civil action against District.

For purposes of those provisions, the running of the time within which a claim must be presented to District shall be tolled from the time Consultant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

12. Termination.

- 12.1. **For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement for its own convenience and compensate Consultant only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by Consultant or no later than three (3) days after the day of mailing, whichever is sooner.
- 12.2. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
- 12.2.1. material violation of this Agreement by Consultant; or
 - 12.2.2. any act by Consultant exposing District to liability to others for personal injury or property damage.

Written notice by District shall contain the reasons for such intention to terminate. Unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, District may secure the required services from another Consultant. If expenses, fees, and/or costs to District exceed the cost of providing the service pursuant to this Agreement, Consultant shall immediately pay the excess expenses, fees, and/or costs to District upon the receipt of District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

13. Indemnification.

- 13.1. To the furthest extent permitted by California law, Consultant shall indemnify and hold harmless District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant ("Claim"). Consultant shall, to the furthest extent permitted by California law, defend the Indemnified Parties at Consultant's own expense, including attorneys' fees and costs, from any and all Claim(s) and allegations relating thereto. District shall have the right to accept or reject any legal representation that Consultant proposes to defend the Indemnified Parties.
- 13.2. Consultant shall pay and satisfy any judgment, award, or decree that may be rendered against the Indemnified Parties in any Claim, subject to section 13.1 above. Consultant's obligation pursuant to this Article includes reimbursing 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 the defense of any

Claim(s) and to enforce the indemnity herein, subject to section 13.1 above. Consultant's obligation to indemnify shall not be restricted to insurance proceeds.

- 13.3. District may withhold any and all costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant from amounts owing to Consultant.

14. Insurance.

- 14.1. **Coverage.** Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
Professional Liability	\$ 1,000,000
Workers Compensation	Statutory Limits
Employer's Liability , per accident for bodily injury or disease	\$ 1,000,000

- 14.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect Consultant, District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by District.)

- 14.1.2. **Workers' Compensation and Employer's Liability Insurance.** Workers' Compensation Insurance and Employer's Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, Consultant shall be required to secure workers' compensation coverage for its employees. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of District for all work performed by Consultant, its employees, agents and subcontractors. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

- 14.1.3. **Professional Liability (Errors and Omissions).** Professional Liability Insurance as appropriate to Consultant's profession, coverage to continue through completion of construction plus three (3) years thereafter.

- 14.2. **Proof of Carriage of Insurance.** Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to District and approved by District. Certificates and insurance policies shall include the following:
- 14.2.1. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
 - 14.2.2. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
 - 14.2.3. An endorsement stating that District and its Board of Trustees, agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement stating that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District. An endorsement stating that there shall be a waiver of any subrogation.
 - 14.2.4. All policies except the Professional Liability, Workers' Compensation Insurance, and Employer's Liability Insurance Policies shall be written on an occurrence form.
 - 14.2.5. Insurance written on a "claims made" basis shall be retroactive to a date that coincides with or precedes Consultant's commencement of Work, including subsequent policies purchased as renewals or replacements.
- 14.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to District.
- 14.4. If Consultant normally carries insurance in an amount greater than the minimum amounts required herein, that greater amount shall become the minimum required amount of insurance for purposes of the Agreement. Therefore, Consultant hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Agreement.
15. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If Consultant observes that any of the Services required by this Contract is at variance with any such laws, ordinance, rules or regulations, Consultant shall notify District, in writing, and, at the sole option of District, any necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Consultant's receipt of a written termination notice from District. If Consultant performs any Services that is in violation of any laws, ordinances, rules or regulations, without first notifying District of the violation, Consultant shall bear all costs arising therefrom.

15.1. **Labor Code Requirements:** Consultant shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1 – 5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with District.

15.1.1. **Registration:** If applicable, before a public works contract can be awarded, Consultant and its subcontractor(s) shall be registered with the Department of Industrial Relations in accordance with Labor Code section 1771.1. At least one week before commencing work, Consultant shall provide to District the name and DIR registration number for Consultant and any applicable subcontractor.

15.1.2. **Certified Payroll Records:** Consultant and its subcontractor(s) shall keep accurate certified payroll records of workers and shall electronically submit certified payroll records directly to the Department of Industrial Relations weekly or within ten (10) days of any request by District or the Department of Industrial Relations.

15.1.3. **Labor Compliance:** Consultant shall perform the Services of the Project while complying with all the applicable regulations, including section 16000, et seq., of Title 8 of the California Code of Regulations and is subject to labor compliance monitoring and enforcement by the Department of Industrial Relations.

16. **Certificates/Permits/Licenses/Registrations.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits, licenses, and registrations as are required by law in connection with the furnishing of Services pursuant to this Agreement.

17. **Anti-Discrimination.** It is the policy of District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decision making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status and therefore Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, Consultant agrees to require like compliance by all of its subcontractor(s).

18. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing of any portion of the Services. Consultant expressly acknowledges that the following conditions shall apply to any work performed by Consultant and/or Consultant's employees on a school site:

18.1. All site visits shall be arranged through District;

18.2. Consultant and Consultant's employees shall inform District of their proposed activities and location at the school site, allowing District time to arrange site visits without a disruption to the educational process;

- 18.3. Consultant and/or Consultant's employees shall check in with the school office each day immediately upon arriving at the school site;
 - 18.4. Once at such location, Consultant and Consultant's employees shall not change locations without contacting District;
 - 18.5. Consultant and Consultant's employees shall not use student restroom facilities; and
 - 18.6. If Consultant and Consultant's employees find themselves alone with a student, Consultant and Consultant's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.
19. **Disabled Veteran Business Enterprises.** Education Code section 17076.11 requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises ("DVBE"). In accordance therewith, Consultant must submit, upon request by District, appropriate documentation to District identifying the steps Consultant has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
20. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
21. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** District may evaluate Consultant in any way District is entitled pursuant to applicable law. District's evaluation may include, without limitation:
- 21.1. Requesting that District employee(s) evaluate Consultant and Consultant's employees and subcontractors and each of their performance.
 - 21.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
22. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial 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.
23. **Confidentiality.** Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
24. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage

prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission or electronic mail, addressed as follows:

District:

Alum Rock Union School District
2930 Gay Avenue
San Jose, CA 95127
ATTN: Kolvira Chheng, Assistant
Superintendent of Business Services
Email: kolvira.chheng@arUSD.org
Fax: _____

Consultant:

[NAME]

ATTN: _____
Email: _____
Fax: _____

Any notice personally given or sent by facsimile transmission or electronic mail shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

- 25. **Assignment.** The obligations of Consultant pursuant to this Agreement shall not be assigned by Consultant. Any such assignment shall be null and void.
- 26. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- 27. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which District's administrative offices are located.
- 28. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 29. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
- 30. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
- 31. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
- 32. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses,

witness fees, court costs and attorney's fees.

33. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
34. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
35. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.
36. **Counterparts.** This Agreement may be executed in one or more counterparts, and all counterparts together shall be construed as one document. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one Agreement binding all the Parties hereto.
37. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

[SIGNATURES ON FOLLOWING PAGE]

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

Dated: _____, 202_

Dated: _____, 202_

Alum Rock Union School District

Signed By: _____

Signed By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Information regarding Consultant:

License No.: _____

_____:

Address: _____

Employer Identification and/or
Social Security Number

Telephone: _____

Facsimile: _____

E-Mail: _____

Type of Business Entity:

- ___ Individual
- ___ Sole Proprietorship
- ___ Partnership
- ___ Limited Partnership
- ___ Corporation, State: _____
- ___ Limited Liability Company
- ___ Other: _____

NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, District requires Consultant to furnish the information requested in this section.

EXHIBIT A
DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT

Consultant's entire Proposal is **not** made part of this Agreement.

A. Introduction

The Commissioning Agent ("CxA") will provide consulting Services for the _____ . The District is committed to commissioning the bond projects to ensure Mechanical, Electrical and Plumbing systems are well designed, constructed, operate properly and the District's staff has adequate system documentation and training for proper maintenance and operation.

The CxA shall be an independent entity not affiliated with members of the project team. The CxA shall lead the commissioning process and shall plan, schedule, review, coordinate and manage the implementation of all commissioning process activities. The CxA shall report to the District and coordinate with the design team, contractors and the District Facilities Department for training and system operations.

B. Basic CxA Services

1. The commissioning process shall include the following systems for new construction and modernization of existing school sites: HVAC systems and associated energy management control systems, electrical distribution, lighting controls, domestic hot water systems, water usage, energy management systems, and fire protection. Low voltage including but not limited to fire alarms, security systems, cameras, speakers clocks, and classroom technology upgrades.
2. Review original construction, maintenance and operation documents for each proposed site.
3. Conduct site assessments to evaluate existing equipment needs and operating issues. Meet with District Facilities staff, building occupants and service vendors to review current building operations.
4. Review warranties to determine what equipment or systems, if any, still have valid warranties. This would include any recently replaced equipment.
5. Coordinate a building controls meeting with District staff and system vendor to identify current operating and system issues.
6. Assist the District with the review and selection of a mechanical controls vendor and system.
7. Develop a list of recommended Operating Procedures for each project to include systems, equipment and components.
8. Develop full commissioning guidelines and specifications for the complete HVAC equipment and systems in compliance with the HVAC Commissioning Process, ASHRAE Guideline 1-1996, copy of the ASHRAE document can be obtained by contacting ASHRAE at 404-636-8400.

9. Adhere to California Energy Commission regulations in Section 120.8 for mandatory commissioning requirements.
10. Adhere to the California Building Standards Code, Title 24 and all supplements.
11. Conduct a commissioning specification review meeting with the Design Team and District staff.
12. Coordinate and direct commissioning activities in a logical, sequential and efficient manner using consistent protocols and forms, centralized documentation (web-based database and electronic submittal collection, O&M manuals and issues resolution in one central system is preferred), clear and regular communications and consultations with all necessary Parties, frequently updated timelines and schedules and technical expertise.
13. Plan, conduct, and document commissioning meetings as needed.
14. Maintain a master issues log and a separate record of functional testing (web- based is preferred). Report all issues as they occur directly to the District Project Manager.
15. The Commissioning Report shall include the issues log, plan, progress reports, training records, test schedules, operation reports, functional commissioning tests, and trend log analysis. Also include all Test and Balancing Reports and recommendations.

C. Design Phase

1. Conduct assessments of existing equipment and operating procedures to identify equipment and/or systems that could be salvaged, or is in need of replacement.
2. Coordinate with the design team to review and make recommendations and provide options to incorporate new construction with existing systems and equipment.
3. Develop Commissioning Plan identifying all equipment to be removed, commissioned, timeline, and deliverables through the commissioning process for review by the District and Design Team.
4. Perform focused reviews of the design, drawings and specifications during schematic, design development, and construction documents phases.
5. Review alternative system design options to ensure the overall best systems and equipment is being selected and specified. Provide full life cycle assessments.
6. Develop full commissioning specifications for all commissioned equipment. Coordinate with and integrate these into the specifications of the architects and engineers. Commissioning specifications shall include a detailed description of the responsibilities of all Parties, details of the commissioning process; reporting and documentation requirements, including formats; alerts to coordination issues; deficiency resolution; construction checklist and startup requirements; the functional testing process; specific functional test requirements, including testing conditions and acceptance criteria for each piece of equipment being commissioned.
7. Coordinate a controls integration meeting where the electrical and mechanical engineers and the CxA review integration issues between equipment, systems and

disciplines to ensure the integration issues and responsibilities are clearly described in the specifications.

D. Bid Phase

1. Attend pre-bid meetings to answer commissioning related questions.
2. Answer RFI's regarding commissioning during the bid phase.

E. Construction Phase

1. Coordinate and direct the commissioning activities in a logical, sequential and efficient manner using consistent protocols and forms, centralized documentation, clear and regular communications and consultations with all necessary Parties, frequently updated timelines and schedules and technical expertise.
2. Coordinate the commissioning work and, with the Contractor, Design Team and District Project Manager ensure that commissioning activities are being incorporated into the master schedule.
3. Update the construction phase commissioning plan to include revised schedules and scope adjustments.
4. Plan and conduct commissioning meetings as needed and distribute minutes.
5. Initiate, request and review additional information required to perform commissioning tasks, including O&M materials, contractor start-up and close out procedures. Before startup, gather and review the current control sequences and work with contractors and design engineers until sufficient clarity has been obtained, in writing, to be able to write detailed testing procedures.
6. Review Contractor submittals applicable to systems being commissioned for compliance with commissioning needs, concurrent with the Design Team reviews. CxA shall review substitution request along with Design Team and District Project Manager.
7. Review RFI's and change orders for impact on commissioning and site operating objectives.
8. Write and distribute installation and operation checklists for commissioned equipment and systems.
9. Develop an enhanced start-up and initial systems inspection plan with Contractors, Design Team and District Project Manager for commissioned equipment.
10. Verify HVAC piping pressure test and flushing, ensuring that proper procedures were followed. Include testing documentation in the Commissioning Report.
11. Verify any ductwork testing and cleaning, ensuring that proper procedures were followed. Include documentation in the Commissioning Report.
12. Document construction checklist completion by reviewing completed pre-operation checklists and site observations.

13. Document systems startup by reviewing start-up reports and by site observation.
14. Approve air and water systems balancing by verifying testing and reviewing reports and site observations.
15. Write the functional performance test procedures for equipment and systems. This will include manual functional testing, energy management control system trending and include stand-alone data logging monitoring. Submit testing information to District Project Manager for review and approval.
16. Provide and coordinate all piping pressure test and flushing, ensuring that proper design and operating specifications are met. Include testing documentation in the Commissioning Report.
17. Coordinate and document manual functional performance tests performed with the assistance of the District. The functional testing shall include operating the system and components through each of the written sequences of operations, and other significant modes and sequences, including startup, shutdown, unoccupied mode, manual mode, staging, miscellaneous alarms, power failure, security alarm when impacted and interacts with other systems or equipment. Sensors and actuators shall be calibrated during operation check. Tests on respective HVAC equipment shall be executed during both the heating and cooling season. However, some overriding of control values to simulate conditions shall be permitted. Functional testing shall be done using conventional manual methods, control system trend logs, and read-outs or stand-alone data loggers, to provide a high level of confidence in proper system function, as deemed appropriate by the CxA and the District.
18. Compile a Commissioning Report. Include a summary report that has a list of participants and roles, facilities description, commissioning and testing scope, and a detailed description of testing and verification methods. The Commissioning Report shall also include the issues log, commissioning plan, progress reports, submittals and O&M manual reports, operation tests and operation trending logs. All outstanding non-compliance items shall be specifically listed. Recommendations to address non-compliant issues, future actions needed, and commissioning process changes shall also be listed. The report should also include the disposition of the CxA to validate the commissioning process for equipment operation, documentation and conducted training.
19. Participate in the final punchlist review with the Design Team, District Project Manager, and DSA inspector to document any commissioning or operating deficiencies.

F. Operation/Post Occupancy Phase

1. Coordinate and review all phases of system operations at each site to ensure the systems are properly operating and adhere to all performance goals.
2. Participate in the closeout of punchlist items affecting commissioning and system operations.
3. Ensure proper operational training has been provided to District staff and service vendors. Provide supplemental training to District staff and update all programs and equipment operation controls as requested.

4. Ensure all O&M manuals are provided and clearly formatted for District staff to easily interpret and implement.
5. Ensure all warranty information is properly documented. Define the District's responsibilities required to maintain the warranty.
6. Participate in the 24 month warranty period inspection to validate building operations. Inspection would be scheduled by the District prior to the end of the warranty period.
7. Prepare and submit to the District the Final Commissioning Report.
8. Prepare and submit to the District a Preventive Maintenance scheduled for all equipment and systems commissioned.

**EXHIBIT B
HOURLY BILLING RATES**

Consultant's entire proposal is **not** incorporated.

[INSERT HOURLY RATES AND FEE SCHEDULE FROM CONSULTANT; REMOVE ANY "FINE
PRINT"/ADDITIONAL TERMS AND CONDITIONS]

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 provides, in relevant part:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing satisfactory proof to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

I am aware of the provisions of Section 3700 of the Labor Code which 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 I will comply with such provisions before commencing the performance of the Work of this Contract.

Date: _____

Name of Consultant: _____

Signature: _____

Print Name and Title: _____

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with District prior to performing any Services under this Agreement.)

**PREVAILING WAGE AND
RELATED LABOR REQUIREMENTS CERTIFICATION**

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours' notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project including, without limitation, labor compliance monitoring and enforcement by the Department of Industrial Relations.

Date: _____

Name of Consultant: _____

Signature: _____

Print Name and Title: _____

FINGERPRINTING CERTIFICATION/CRIMINAL BACKGROUND INVESTIGATION

The undersigned does hereby certify to District that I am a representative of Consultant entering into this Agreement with District; that I am familiar with the facts herein certified; and that I am authorized and qualified to execute this certificate on behalf of Consultant.

Consultant certifies that it has taken at least one of the following actions (check all that apply):

- The Work of the Agreement is either (i) at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of the Agreement shall come in contact with District pupils or (ii) if Consultant's employees or any subcontractor or supplier of any tier of the Contract interacts with pupils, such interaction shall only take place under the immediate supervision and control of the pupil's parent or guardian or a school employee, so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Consultant under the Agreement.
- Consultant, who is not a sole proprietor, has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Consultant's employees and all of its subcontractors' employees 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 (A) that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). When Consultant performs the criminal background check, it shall immediately provide any subsequent arrest and conviction information it receives to District pursuant to the subsequent arrest service. No work shall commence until the Department of Justice ascertains that Consultant's employees and any subcontractors' employees have not been convicted of a felony as defined in Education Code Section 45122.1.

A complete and accurate list of Consultant's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto as ATTACHMENT "A."

- Consultant is a sole proprietor and intends to comply with the fingerprinting requirements of Education Code section 45125.1(h) with respect to all Consultant's employees who may have contact with District pupils in the course of providing services pursuant to the Agreement, and hereby agrees to District's preparation and submission of fingerprints such that the California Department of Justice may determine (A) that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). No work shall commence until the Department of Justice ascertains that Consultant has not been convicted of a felony as defined in Education Code Section 45122.1.

Consultant's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of Consultant.

FINGERPRINTING CERTIFICATION/CRIMINAL BACKGROUND INVESTIGATION

ATTACHMENT "A"

List of Employees/Subcontractors

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

If further space is required for the list of employees/subcontractors, attach additional copies of this page.

Date: _____

Name of Consultant: _____

Signature: _____

Print Name: _____

Title: _____