

100 20-21

Final 2. SFUSD – Organization/Professional Services Contractor Agreement: FY 2020-21.v.3

ORGANIZATION/PROFESSIONAL SERVICES CONTRACTOR AGREEMENT

This Contract ("Agreement" or "Contract") is dated for convenience as of **NOVEMBER 5, 2020**, between the **San Francisco Unified School District** ("District") and **NATIONAL EQUITY PROJECT - KINGMAKERS OF OAKLAND** ("Contractor"). The District and Contractor may be individually referred to herein as a "Party" or collectively referred to herein as the "Parties."

RECITALS

WHEREAS, absent an exception or exclusion, competitive solicitation is required when contracting for Goods and Services in excess of the State bid limit, adjusted annually for inflation;

WHEREAS, the District is authorized to contract with and employ any persons for the furnishing of special and professional services and advice if those persons are specially trained and experienced and competent to perform the services required;

WHEREAS, the District desires Contractor to provide the services as detailed herein, and

WHEREAS, Contractor represents itself able and, for a consideration, willing to perform the services for/at **STARR KING ELEMENTARY SCHOOL**.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. SERVICES.

Contractor agrees to perform the services provided for in the attached **APPENDIX A** ("Scope of Work or Services"). *If closure of schools or other impediments arise to preclude Contractor from performing in-person services, Contractor agrees to perform Services remotely. In the alternative, Contractor agrees that its obligation to perform Services and the right to receive Compensation for those Services will be suspended for the duration of the school closures or interruption to in-person Services.*

2. TERM; EFFECTIVE DATE.

This Agreement shall become effective only upon approval and/or ratification by the District's Board of Education in an open, noticed meeting, proper execution by the Parties and certification by the Chief Financial Officer as to the availability of funds. The term for these Services shall commence on July 27, 2020 shall expire on June 15, 2021 *unless terminated earlier pursuant to the terms of this Agreement*

3. COMPENSATION.

Compensation to Contractor shall not exceed **SIXTEEN THOUSAND** dollars (\$16,000). *The Not to Exceed amount is the maximum amount of compensation due Contractor and not a guarantee of total payment to Contractor, as Contractor is paid in arrears for services rendered.* The breakdown of costs and payment schedule associated with this Agreement are detailed in the attached APPENDIX B ("Schedule of Fees and Charges")

4. AVAILABILITY OF FUNDS; BUDGET AND FISCAL PROVISIONS; TERMINATION IN THE EVENT OF NON-APPROPRIATION

- a. This Agreement is subject to the budget and fiscal policies, regulations and practices of the District, and approval and appropriation of funds for this Agreement.
- b. The amount of the District's obligation hereunder shall not at any time exceed the amount herein stated.
- c. The District has no obligation to renew this Agreement after expiration of its term.
- d. If funds are appropriated for only a portion of a fiscal year, this Agreement will terminate, without penalty, at the end of the term for which funds are appropriated.

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- e. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

5. DISALLOWANCE

- a. If Contractor claims or receives payment from the District for a service that is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to the District upon the District's request. At its option, the District may offset the amount disallowed from any payment due or that may become due to Contractor under this Agreement.
- b. By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal or state programs. Contractor acknowledges that this certification of eligibility to receive state or federal funds is a material term of this Agreement.

6. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES

Pursuant to Government Code §12650 et. seq., any person, including a contractor, subcontractor or a Contractor, who submits a false claim, shall be liable to the District for three times the amount of damages which the District sustains because of the false claim. A person who commits a false claim act shall also be liable to the District for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to the District for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim. A person will be deemed to have submitted a false claim to the District if the person:

- a. knowingly presents or causes to be presented to an officer or employee of the District, a false claim for payment or approval;
- b. knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the District;
- c. conspires to defraud the District by getting a false claim allowed or paid by the District;
- d. has possession, custody, or control of public property or money used or to be used by the District and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;
- e. is authorized to make or deliver a document certifying receipt of property used or to be used by the District and knowingly makes or delivers a receipt that falsely represents the property used or to be used;
- f. knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;
- g. knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the District; or
- h. is a beneficiary of an inadvertent submission of a false claim to the District, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the District within a reasonable time after discovery of the false claim.

7. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK

No payment shall in any way lessen the liability of Contractor to remedy or replace unsatisfactory work, service, equipment, or materials, if the unsatisfactory character of such work, service, equipment or materials was not detected at the time of payment. Service, materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by the District and in such case must be remedied or replaced by Contractor without delay at no additional cost to the District.

8. RESPONSIBILITY FOR EQUIPMENT

The District shall not be responsible for any damages to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, even though such equipment be furnished, rented or loaned to Contractor by the District.

9. TAXES

Contractor shall pay all taxes levied in connection with this Agreement, or the services delivered pursuant hereto.

10. INDEPENDENT CONTRACTOR

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- a. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and not an employee of the District. Contractor shall be wholly responsible for the manner in which it performs the services required of it under this Agreement. Nothing contained in this Agreement shall be construed as creating an employment or agency relationship between the District and Contractor or its agents and employees.
- b. Any terms in this Agreement referring to direction from the District shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as the means by which such a result is obtained. The District does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Nothing contained in this Agreement shall be construed as creating an employment or agency relationship between the District and Contractor or its agents and employees.
- c. If any governmental authority should, nevertheless, determine that Contractor is an employee, then the District's payment obligations hereunder shall be reduced so that the aggregate amount of payments directly to Contractor and to the applicable governmental authority does not exceed the maximum amount specified in this Agreement. Contractor shall refund any amounts necessary to effect such reduction.

11. INDEMNIFICATION

Contractor shall indemnify and hold harmless the District, its Board, officers, employees and agents from, and, if requested, shall defend them against any and all claims, demands, liabilities, obligations, losses, damages, judgments, costs or expenses (including legal fees and costs of investigation) (collectively "Claim"), whether actual or alleged, arising directly or indirectly from or in any way connected with the performance of this Agreement by Contractor and/or Contractor's agents, including but not limited to any Claim for personal injury, death, property damage, loss of profits, infringement upon intellectual property rights, failure to comply with the criminal background check requirements of Education Code section 45125.1 and/or disclosure of confidential information which might be obtained by Contractor or Contractor's agents in the performance of this Agreement. Notwithstanding the foregoing, Contractor shall have no obligation under this Section with respect to any Claim that is caused by the active negligence or willful misconduct of District and which is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by Contractor or Contractor's agents.

12. INSURANCE

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his or her agents, representatives or subcontractors. Specifics regarding the amount and type of insurance are set-forth in the attached **APPENDIX C** ("Insurance Requirements").

13. LIABILITY OF DISTRICT

DISTRICT'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT PROVIDED TO CONTRACTOR UNDER THIS AGREEMENT. DISTRICT SHALL NOT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, IN CONNECTION WITH THIS AGREEMENT.

14. DEFAULT

Contractor shall be in default if Contractor: (a) fails to perform any term, covenant, or condition contained in this Agreement; (b) files or is the subject of a petition for bankruptcy or insolvency; or, (c) has a court-ordered receiver or trustee appointed with respect to Contractor's assets.

15. REMEDIES

If a default has occurred and is continuing, the District may, in its sole discretion, and individually or in combination with any other remedy:

- a. Terminate this Agreement upon ten or fewer days' written notice at the discretion of the District. District shall specify the date of termination in its written notice of termination for default. Contractor shall be paid for services satisfactorily rendered through the date of termination;

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- b. Offset the amount of any outstanding liability of Contractor against funds otherwise due and owing hereunder or any other agreement with Contractor;
- c. Withhold funds due hereunder;
- d. Cure the default, in which event all amounts expended by the District in effecting such cure shall be payable upon demand, with interest from the date of incurrence at the maximum rate permitted by law; and/or
- e. Exercise any other remedy available by law.

16. TERMINATION

- a. It is expressly understood and agreed that in an Event of Default by the Contractor under this Agreement, this Agreement may be terminated for cause by the District and all the Contractor's rights hereunder ended. Termination for cause shall be upon ten (10) days written notice, and no work will be undertaken by Contractor after receipt of the notice of termination for cause, with the exception of actions necessary to effectuate the termination.
- b. It is further understood and agreed that the District may terminate this Agreement for the District's convenience and without cause at any time by giving the Contractor thirty (30) days written notice of such termination.
- c. Upon receipt of any notice of termination of this Agreement, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by District in a manner that minimizes the liability of Contractor and District to third parties as a result of termination. All such actions shall be subject to prior approval by District and shall include, without limitation: canceling orders, assigning interests to the District, settling outstanding liabilities and claims, securing and safe-guarding District property, and halting or completing services in the manner specified by the District.
- d. In no event shall District be liable for costs incurred by Contractor or any of its subcontractors after the effective date of termination, except for those costs specifically approved by the District as necessary to effect the termination in a manner acceptable to the District. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest.
- e. Within thirty (30) days after the effective date of termination, the Contractor will submit an itemized invoice detailing the unpaid costs incurred for the services rendered pursuant to this Agreement up to the effective date of termination. The District's payment obligation under this Section shall survive termination of this Agreement. Upon payment of approved charges under such invoice by the District, the District shall be under no further obligation to the Contractor, monetarily or otherwise.

17. NOTICES

Any notices or communications required or permitted to be given by this Agreement must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the Party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such Party as follows:

NOTICE TO THE DISTRICT:

SITE/DEPARTMENT	STARR KING ELEMENTARY SCHOOL.
HEAD OF SITE/DEPARTMENT	DARLENE MARTIN
CONTACT PERSON	DARLENE MARTIN
STREET ADDRESS	1215 CAROLINA ST
CITY, STATE, ZIP	San Francisco, CA 94107
TELEPHONE	(415) 6955797
EMAIL ADDRESS	martind@sfusd.edu

NOTICE TO THE CONTRACTOR:

CONTRACTOR NAME	NATIONAL EQUITY PROJECT - KINGMAKERS OF OAKLAND
CONTACT PERSON	CHRISTOPHER CHATMON
STREET ADDRESS	1720 BROADWAY, SUITE 400
CITY, STATE, ZIP	OAKLAND, CA 94612

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TELEPHONE	(510) 589-4658
EMAIL ADDRESS	CHRIS@KINGMAKERSOFOAKLAND.ORG

With Copy to:
San Francisco Unified School District
Contracts Office
135 Van Ness Street, Room 102
San Francisco, CA 94102
contract@sfusd.edu

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A Party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other Party pursuant to this Section.

18. CRIMINAL BACKGROUND CHECK/SUBSEQUENT ARREST NOTIFICATION REQUIREMENTS

- a. Criminal Background Check
- 1) Throughout the term of this Agreement, if Contractor or any of its employees, agents or volunteers that Contractor hires or assigns, will have more than limited contact with SFUSD students, Contractor is required to comply with the criminal background check provisions of Education Code Section 45125.1. Contractor must conduct criminal background checks through the California Department of Justice (CDOJ), including both CDOJ and Federal Bureau of Investigation (FBI) background checks, and must obtain subsequent arrest notification (as below), for all Contractor employees, agents, and volunteers who will have more than limited contact with District students pursuant to this Agreement.
 - 2) Contractor certifies that no Contractor employee, agent or volunteer who has been convicted of a serious or violent felony as defined by Education Code Section 45125.1 (citing Education Code Section 45122.1), a sexual offense as defined by Education Code Section 44010, a controlled substance offense as defined by Education Code Section 44011, or any other offense that renders Contractor's proximity to children or services to the District inappropriate, shall have contact with District students under this Agreement. This prohibition does not apply to an employee, agent or volunteer who has obtained a certificate of rehabilitation and pardon pursuant to California Penal Code Section 4852.01 et seq. for a serious or violent felony listed under Education Code Section 45122.1.
 - 3) It is the Contractor's sole responsibility to comply with the CDOJ fingerprint and criminal background investigation requirements and maintain compliance throughout the duration of this Agreement.
 - 4) The District will not be responsible for the costs of the criminal background checks.
 - 5) Contractor's employees, agents or volunteers who will have no contact or only limited contact with students are not required to meet criminal background check and subsequent arrest notification requirements.
 - 6) If Contractor asserts that all of its employees, agents or volunteers will have no contact or only limited contact with District students, the District Administrator supervising this Agreement will be required to affirm that Contractor has correctly disclosed the level of student contact associated with the services provided under this Agreement. The District's determination shall control.
- b. Subsequent Arrest Notification
- 1) In addition to the initial criminal background check, Contractor will obtain from CDOJ subsequent arrest notification to monitor future arrests of employees, agents and volunteers who will have more than limited contact with District students pursuant to this Agreement. District shall not be responsible for the costs associated with the subsequent arrest notifications.

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- 2) Upon receipt of notice that any of its employees, agents, or volunteers who will have more than limited contact with District students pursuant to this Agreement has been arrested or convicted of a serious or violent felony as defined by Education Code Section 45125.1 (citing Education Code Section 45122.1), a sexual offense as defined by Education Code Section 44010, or a controlled substance offense as defined by Education Code Section 44011, or any other offense that renders Contractor's proximity to children or services to the District inappropriate Contractor will immediately prohibit such employee, agent, or volunteer from having any contact with District students pursuant to this Agreement, and Contractor will immediately notify the District of such arrest.
- 3) Without limiting any other available legal remedies, failure by Contractor to comply with this Section may result in termination of this Agreement at the District's sole discretion.
- c. Contractor certifies that it will comply with all CDOJ fingerprint and criminal background investigation requirements of Education Code section 45125.1 et seq., and maintain compliance throughout the duration of this Agreement with SFUSD.
- d. Evidence of compliance with these requirements shall be immediately available to the District upon request or audit.

19. **TUBERCULOSIS SCREENING REQUIREMENTS**

- a. California law requires that school consultants working with students be free of infectious tuberculosis (TB).
- b. If Contractor, its employees and/or sub-Contractors ("Contractor Parties") shall or may be on a District school site and have contact with District students three or more times per month during the term of this Agreement, then Contractor shall at all times during the duration of the Agreement maintain compliance with the tuberculosis ("TB") certification requirements as set forth herein.
- c. Contractor shall maintain on file documents confirming that Contractor Parties received a TB test or TB assessment that complies with the requirements of California Education Code section 49406. These documents shall be regularly maintained and updated by Contractor and shall be available to District upon request or audit. Contractor further agrees and acknowledges that all new personnel hired after the Effective Date of this Agreement are subject to the TB certification requirements and shall be prohibited from having any contact with District students until the TB certification requirements have been satisfied.
- d. All costs to comply with the TB certification requirements are the Contractor's responsibility.
- e. Contractor shall indemnify, defend and hold harmless the District and its officers, directors, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from any failure to comply with these TB certification requirements.
- f. Evidence of compliance with these requirements shall be immediately available to the District upon request or audit.

20. **CALIFORNIA STATE TEACHERS RETIREMENT SERVICES - POSTRETIREMENT EARNINGS LIMIT**

- a. A school district is required to report post-retirement earnings to CalSTRS for retired members who perform creditable service whether the retired member was compensated as an employee of the district, independent contractor or employee of a third party.
- b. When a retired member's earnings exceed the fiscal year limitation, their retirement benefit will be reduced by the amount earned over the annual limit.
- c. The amount reduced may be equal to their monthly retirement benefit payable but shall not exceed the annual retirement benefit payable to the member.
- d. Contractor certifies that it is cognizant and fully informed of regulations regarding Postretirement Earnings Limits applicable to retirees from California State Teachers Retirement Services (CalSTRS). (California Education Code Sections 22714, 24114, 24116, 24214, 24214.5 and 24215.)
- e. **Contractor shall inform the District if owner and/or their employees is a retired member of CalSTRS before receiving payment for services under this Agreement, and all post-retirement earnings shall be reported to CalSTRS.**
- f. Contractor shall indemnify, defend (by counsel reasonably acceptable to the District) and hold harmless the District and its officers, directors, agents and employees from and against claims,

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damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from any failure to adhere to CalSTRS regulations applicable to retirees Postretirement Earnings Limit.

21. **CONFLICT OF FINANCIAL INTEREST**

- a. It shall be Contractor's responsibility to know, and comply with, all requirements of California law pertaining to Conflicts of Financial Interest in contracting with public agencies. It is the obligation of the Contractor to determine whether or not participation in a contract may constitute a conflict of interest. While the District staff maintains records regarding the award and execution of contracts, it does not have access to specific information concerning which entities, partners, subcontractors or team members perform specific work on these contracts. A conflict of interest or an unfair advantage may exist without any knowledge of the District. The determination of the potential for a conflict must be made by the Contractor. Contractor is responsible to notify the District immediately if it finds that a potential conflict may exist.
- b. Contractor certifies that it has read, understood and will comply with conflict of interest laws and regulations, set-forth in **Board Rule and Procedure 9270 / Conflict of Interest and the Appendix to Board Rule and Procedure 9270 / Conflict of Interest**.
- c. Contractor certifies that it is familiar with the provisions of set-forth in **Board Rule and Procedure 9270 / Conflict of Interest and the Appendix to Board Rule and Procedure 9270**; certifies that it does not know of any facts that constitute a violation of such provisions; and agrees to promptly notify the District if it becomes aware of any such facts during the term of this Agreement. Please refer to the following links for the complete text of **Board Rule and Procedure 9270** and **Appendix to Board Rule and Procedure 9270**: (right click to open link)
<http://go.boarddocs.com/ca/sfusd/Board.nsf/goto?open&id=AGUTL477D602>
<http://go.boarddocs.com/ca/sfusd/Board.nsf/goto?open&id=AWU6KM1553E4>

22. **NON DISCRIMINATION**

The District is committed to providing equal opportunity for all individuals in education. Contractor understands and agrees that in providing services to the District, it is Contractor's obligation to comply with **Board Policy 0410 / Nondiscrimination in District Programs and Activities**, which requires that all District programs, activities, and practices be free from discrimination based on race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity or expression, or genetic information; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics. To the extent that the services Contractor will provide to the District under this Agreement include the provision of services to students, Contractor further understands and agrees that, in providing such services to the District, Contractor shall comply with **Board Policy 6141 / Curriculum Development and Evaluation**, which recognizes that the District's curriculum may sometimes include instruction related to controversial issues that may arouse strong reactions based on personal values and beliefs, political philosophy, culture, religion, or other influences. The services provided by Contractor shall not reflect adversely upon persons because of their race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity or expression, or genetic information; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics. By signing this Agreement, Contractor certifies that its programs, activities, and practices are free from discrimination and that it shall strictly adhere to and comply with District policies. **Please refer to the following links for the complete text of Board Policy 0410 and Board Policy 6141:** (right click to open link)
<http://go.boarddocs.com/ca/sfusd/Board.nsf/goto?open&id=B4T49X7AED0E>
<http://go.boarddocs.com/ca/sfusd/Board.nsf/goto?open&id=AGP2W9042347>

23. **PROPRIETARY INFORMATION OF DISTRICT; STUDENT INFORMATION**

- a. Contractor understands and agrees that, in connection with this Agreement, the Contractor may have access to proprietary and/or confidential information which may be owned or controlled by the District, the disclosure of which to third parties may be damaging to the District, its employees or students. Contractor also understands and agrees that the disclosure of such information may violate state and/or federal law and may subject the Contractor to civil liability. Consequently, Contractor agrees that all information disclosed by the District to the Contractor shall be held in strict confidence and

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used only in performance of the Agreement, unless disclosure is required by law or court order. Contractor shall exercise the same standard of care to protect such information as is used to protect its own proprietary and/or confidential information and in no case less than a reasonable standard of care.

- b. Contractor shall comply at all times with the requirements of the Family Educational Records Privacy Act ("FERPA") and relevant state law regarding the confidentiality and handling of student records, including but not limited to California Education Code sections 49073 and sequential. Contractor is prohibited from accessing or using confidential student information under this Agreement unless it first obtains prior written parental consent, or an exception to federal and state privacy laws otherwise permits access to confidential student information applies. **Even if access is permitted, Contractor shall not use confidential student data for any purpose other than providing services to the District pursuant to this Agreement. Contractor shall not re-disclose confidential student information to any third party without the prior written consent of the District and any such re-disclosure shall be consistent with state and federal law.**
- c. **Use of Confidential Student Data for Program Evaluation/Studies.** Contractor's access to and use of confidential student data for purposes other than provided for under this Agreement requires **prior written approval** from the District's Office of Research, Planning and Accountability ("RPA"). Contractor must complete and submit a Research Application to RPA and if RPA approves the Research Application, Contractor must also execute a Data Use and Confidentiality Agreement ("DUA") with RPA.
- d. Within thirty (30) days of the termination or expiration of this Agreement, if no subsequent agreement is in place between the Parties to allow Contractor to have access to the District's confidential student data, then any such data that is in the possession of Contractor shall be confidentially and securely returned to District in all forms in which the Contractor is holding such data, including, if applicable, in a computer-readable format. Once such data is received by District, and, if applicable, District confirms that the computer-readable format is indeed readable, Contractor shall securely destroy any remaining copies of the data that it holds in any form or media within fourteen (14) days of such confirmation from District. Contractor shall destroy all such data utilizing a method of secure destruction that renders such information unreadable, such as shredding or burning, erasure of magnetic media, electronic deletion using file shredding software, or other industry-standard method of secure destruction. Upon request, Contractor shall provide District with written certification that such destruction has occurred.
- e. The confidentiality provisions of this Section shall survive the termination or expiration of this Agreement.

24. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

Contractor acknowledges that, pursuant to the Americans Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor or subcontractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation including without limitation Section 504 of the Rehabilitation Act. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agree that any violation of this prohibition on the part of Contractor, its agents or assigns will constitute a material breach of this Agreement.

25. MANDATED REPORTING OF SUSPECTED CHILD ABUSE OR NEGLECT

If Contractor will provide services at a school site and works with District students pursuant to this Agreement, Contractor is a mandated reporter of suspected child abuse or neglect under California Penal Code section 11165.7, and Contractor will submit reports of suspected child abuse or neglect to Child Protective Services (CPS) as required by law. (Cal. Penal Code section 11165.7, e.g. subsections (a) (7) and (a) (8); Sections 11164 and sequential.) Contractor shall maintain copies of such reports. Contractor is requested, but is not required, to notify the District school site administrator when a CPS report has been filed.

26. OWNERSHIP OF RESULTS

Any newly-developed plans, specifications, studies, reports, memoranda, computation sheets, computer data files or other materials in any form or media prepared by Contractor in connection with services performed

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under this Agreement ("Results") shall be the property of and be promptly transmitted to the District. The District hereby grants to Contractor a non-exclusive, irrevocable, royalty-free license to reproduce, modify, edit, create derivative works based on, and otherwise use the Results. The Parties acknowledge and agree that the Contractor retains and exclusively owns all rights, title and interest in and to the intellectual property rights owned or developed by the Contractor prior to the date of this Agreement or outside of the scope of the services provided pursuant to this Agreement.

27. **AUDIT AND INSPECTION OF RECORDS**

Contractor agrees to maintain and to permit the District to audit, examine and make copies, excerpts and transcripts of all records including without limitation accurate accounting books and records, invoices, timesheets, documents, reports, student records, payroll and personnel records and other materials and data related to Contractor's performance of this Agreement, whether funded in whole or in part under this Agreement. The Contractor shall maintain such records and data in an accessible location and condition for a period of not less than five (5) years after a final payment under this Agreement or until after final audit has been completed, whichever is later.

28. **SUBCONTRACTING**

Contractor is prohibited from subcontracting this Agreement or any services provided pursuant to this Agreement without the prior written consent of the District. Contractor shall be liable to District for all such subcontractors' acts or omissions directly relating to this Agreement, whether provided with or without the District's permission.

29. **ASSIGNMENT**

It is understood and agreed that the services to be performed by the Contractor under this Agreement are personal in character and neither this Agreement, nor any duties or obligations hereunder, shall be assigned or delegated by the Contractor without the prior written consent of the District.

30. **FORCE MAJEURE**

The parties agree that neither shall be liable to the other under this Agreement as a result of any delay, failure or interruption in services directly caused by an act of God or public enemy; acts of civil or military authorities; catastrophes such as an earthquake, epidemic, pandemic, viral or communicable disease outbreak; quarantines; disruption of supply chains, transportation systems, or national emergency, that is beyond the reasonable control of the Party and which renders impossible the performance of contractual obligations, either totally or in part (a "Force Majeure Event"), excluding in all cases claims of financial hardship, and such nonperformance will be excused and will not be deemed a default hereunder or a ground for termination of the Agreement, provided that as soon as reasonably possible the affected Party (1) provides the other party with notice of such Force Majeure Event, (2) provides detailed documentation establishing that such Force Majeure Event was beyond the Party's reasonable control and not due to any fault or negligence on its part, and (3) works diligently to restore services as soon as reasonably possible. In no event shall any work stoppage, strike or labor dispute at a District or Contractor site, or by District or Contractor personnel, constitute a Force Majeure Event under this Agreement. In no event shall District be liable to Contractor for payment for services that cannot be and are not provided as a result of a Force Majeure Event. ***In no event shall District be liable to Contractor for payment for services that cannot be and are not provided as a result of a Force Majeure Event.***

31. **WAIVER**

Either Party's failure at any time to enforce any default or right reserved to it, or to require performance of any of the Agreement's terms, covenants, or provisions by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

32. **DISPUTE RESOLUTION**

Prior to any action or resort to any other legal remedy, District and Contractor agree to exercise reasonable efforts and to negotiate in good faith to resolve to the satisfaction of the Parties any dispute that may arise concerning the performance by either Party of its obligations under this Agreement.

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33. **COMPLIANCE WITH LAWS**

Contractor shall keep itself fully informed of the applicable federal, state and local laws affecting the performance of this Agreement, and shall at all times comply with such laws as they may be amended from time to time.

34. **MODIFICATION OF AGREEMENT**

Any amendment or modification to this Agreement shall be by written instrument and shall only be effective upon execution by the duly authorized representatives of the Parties and approval or ratification by the Board of Education in an open, noticed meeting.

35. **USE OF NAME; MARKETING**

Excluding a simple statement or acknowledgement that Contractor has a written agreement with the District, Contractor will not use the name, marks or logos of the District in any planned advertisement, press release, or other planned publicity or marketing materials, in any form or media, without the prior written approval of the District. Notwithstanding the foregoing provisions of this Section, nothing in this Section shall infringe upon the First Amendment rights of either Party.

36. **GOVERNING LAW; VENUE**

This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, without regard to its conflict of laws rules. The venue for all litigation relative to this Agreement shall be San Francisco, California.

37. **SECTION HEADINGS**

The section headings contained herein are for convenience of reference only and are not intended to define the scope of any provision of this Agreement. In the event of any inconsistency between the *terms* of this Agreement and language set forth in any Appendix to this Agreement, the terms of this Agreement shall take precedence in resolving the conflicting terms.

38. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof, and supersedes any prior or contemporaneous written or oral understanding or agreement, and may be amended only by written amendment executed by the Parties to this Agreement. In the event of any inconsistency between the terms of this Agreement and language set forth in any Appendix to this Agreement, the terms of this Agreement shall take precedence in resolving the conflicting terms.

39. **EXECUTION OF THE AGREEMENT, EXECUTION IN COUNTERPARTS**

- a. Original copies of this Agreement shall be executed by the respective Party's authorized signatories.
- b. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement, but all of which shall be considered one instrument and shall become a binding agreement when one or more counterparts have been signed by each of the Parties and delivered to the other.

40. **SEVERABILITY**

If any term or provision of this Agreement shall be found illegal or unenforceable, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

41. **APPENDICES.**

The Appendices set-forth below and attached hereto are an integral and definitive part of this Agreement and are incorporated herein by this reference. In signing this Agreement, Contractor certifies that it will comply with all laws, regulations, and SFUSD Board Policies referenced in the Appendices; affirms that it is familiar with the laws, regulations, and SFUSD Board Policies referenced in the Appendices; certifies that it does not know of any facts that constitute a violation of any such laws, regulations, and SFUSD Board Policies contained therein; and agrees to promptly notify the District if it becomes aware of any such facts during the term of this Agreement.

Final 2. SFUSD – Organization/Professional Services Contractor Agreement: FY 2020-21.v.3

Appendix A - Scope of Work or Services
Appendix B - Schedule of Fees and Charges
Appendix C - Insurance Requirements

(Continued on next page)

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42. **STUDENT CONTACT DISCLOSURE**

Will Contractor have **MORE THAN LIMITED CONTACT or FREQUENT OR PROLONGED CONTACT** with District students in the performance of this Agreement?
Check one:

YES **NO**

If **YES**, Contractor must comply with the requirements of Sections 18 and 19 prior to Board ratification or approval.

I have reviewed and affirm that the Contractor has correctly disclosed the level of student contact associated with the services provided under this Agreement.



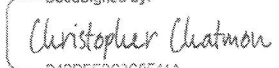
DARLENE MARTIN
PRINCIPAL

Date: 1/23/2021

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as approved/ratified by the Board of Education on _____.


NATIONAL EQUITY PROJECT - KINGMAKERS OF OAKLAND

APPROVED:

DocuSigned by:

BY: _____
Authorized Signature
CHRISTOPHER CHATMON
CEO, KINGMAKERS OF OAKLAND

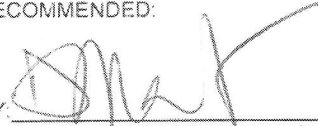
SAN FRANCISCO UNIFIED SCHOOL DISTRICT

APPROVED:

BY: 

INSERT NAME
 Deputy Superintendent, INSERT DEPT
 Chief, INSERT DEPT
 Assistant Superintendent, INSERT DEPT

RECOMMENDED:

BY: 

Signature of Site/Dept. Administrator
DARLENE MARTIN
PRINCIPAL

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APPENDIX A

SCOPE OF WORK or SERVICES

Contractor agrees to provide the following services to the District: Describe how services will be provided remotely if in-person Services are not possible or practical:

National Equity Project - Kingmakers of Oakland will support a customized implementation of "Mastering Our Cultural Identity: African American Male Image" course at Starr King Elementary School.

The consultant will provide a specialized online curriculum (that fosters and enhances a sense of self-esteem for students who have been historically underserved), customized for the unique instructional model, training of all staff including ongoing virtual observations and coaching. All curriculum and support is done virtually via Zoom and google hangout/google classroom/google meet. Staff are given instructional support via webinar sessions and support discussions, monthly professional learning for facilitators as well as access to larger instructional monthly support.

The curriculum will include lesson plans, content referenced in lesson plans, and any other associated materials that instructors will need to implement the curriculum. Professional Development for the selected instructor for the course. Professional Development will include a weeklong orientation, two full-day trainings hosted by KOO through the 2020-2021 academic year and the monthly Professional Learning Communities hosted by Kingmakers of Oakland from August 2020 to May 2021.

Describe how services will be provided remotely if in-person Services are not possible or practical

- What services (in detail) will be provided:
- When will services begin and end:
- Where and How will services be provided:
- How many services will be provided:
- Make sure to describe how services will be provided remotely if in-person Services are not possible or practical

(Note: Attachments will not be accepted; do not include Contractor's written proposal in the Appendix A.)

APPENDIX B

SCHEDULE OF FEES AND CHARGES
CALCULATION OF CHARGES

Total Cost of the Agreement (Not to Exceed Amount) SIXTEEN THOUSAND dollars (\$16,000).

The breakdown of charges shall be as follows for the services rendered pursuant to this Agreement:

The Rate of Pay Will be (Check off and complete one option):

Contractor will work _____ days week / _____ hours per day for \$ _____ per day for _____ weeks

Contractor will work _____ hours / \$ _____ per hour

Contractor will conduct 140 classes. Each class will be 60 minutes for \$ 114.28 class

If contractor is to be reimbursed for expenses, please complete:

Contractor will be reimbursed for expenses not to exceed \$ _____. All expenses will be listed separately on submitted invoice(s). This is for travel, mileage, reimbursement of items purchased etc. receipts should be attached)

or

PROVIDE HERE A BREAKDOWN OF THE COSTS. THE COSTS SHOULD CORRELATE PAYMENT TO CONTRACTOR WITH PROVISION OF SERVICES AND TIMELINES DETAILED IN APPENDIX A. THE BREAKDOWN SHOULD LIST SEPARATELY AND IN DETAIL THE RATE(S) OF PAY, CHARGES, EXPENSES, ETC.

1.) Compensation

- a. The Contractor's fee set forth in this Agreement shall be full compensation for all of Contractor's Services incurred in its performance of the services set forth in Appendix "A" but is only a Not to Exceed Amount and not a guarantee of total payment, as payment is owed only for Services rendered.
- b. All reimbursements for supplies, materials, travel and/or mileage shall not exceed the amount set forth in the Agreement, and shall be listed separately and is subject to approval of the District.
- c. The Fee shall be paid as indicated and the rate of pay shall not be changed for the term Agreement.

2.) Method of Payment

- a. Contractor shall submit invoices in a format approved by the District
- b. Invoices must include the Purchase Order number, school site name, name of individual(s) performing duties, date(s) worked, hours worked.
- c. Contractor shall submit invoices to the District via the District's authorized representative. Upon receipt and approval of Contractor's invoices, the District agrees to make payments on all undisputed amounts within sixty (60) days of receipt of the invoice.
- d.

--end--

APPENDIX C

INSURANCE REQUIREMENTS

Service Provider shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Service Provider, his or her agents, representatives, employees or sub-providers.

Note: Professional liability insurance coverage is normally required if the Service Provider is providing a professional service regulated by the state. (Examples of service providers regulated by the state are insurance agents, professional architects and engineers, doctors, certified public accountants, lawyers, etc.). However, other professional Service Providers, such as computer or software designers, technology services, and services providers such as claims administrators, should also have professional liability. If in doubt, consult with the District's Risk Manager.

Insurance certificates can be emailed to contractinsuranceform@sfusd.edu.

MINIMUM SCOPE OF INSURANCE:

1. **Comprehensive/Commercial General Liability (CGL):** Insurance covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than Two Million Dollars (\$2,000,000.00) per occurrence and a general aggregate in an amount twice the required occurrence limit, including coverages for Employers liability, contractual liability, personal injury, independent Service Providers, and sexual abuse and molestation. The Sexual Abuse and Molestation coverage will be waived, in the District's sole discretion, if the Service Provider has certified will have no contact with, or limited contact with, the District's students in the performance of this Agreement.
 - a. *Additional Insured Status:* The San Francisco Unified School District, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Service Provider including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Service Provider's insurance.
 - b. *Primary Coverage:* For any claims related to this contract, the Service Provider's insurance coverage shall be primary insurance coverage as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Service Provider's insurance and shall not contribute with it.
2. **Automobile Liability** Insurance with limits not less than One Million Dollars (\$1,000,000.00) each accident Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired automobiles. A waiver of the Automobile liability insurance requirements may be requested by Service Provider through the District's Contracts Office provided that Service Provider will not use any automobiles in the performance of this Agreement. The parties understand and agree that the District shall rely upon the representations that the Service Provider shall make in any such waiver.
3. **Workers' Compensation** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions Insurance)** (This is needed if the Service Provider holds a professional license that is regulated by the state) appropriate to the Service Provider's profession, with limits no less than One Million Dollars (\$1,000,000.00) per occurrence or claim, Two Million Dollars (\$2,000,000.00) aggregate.
 1. **Claims Made Policies (note –applicable only to professional liability, see below)**
 2. If any of the required policies provide claims-made coverage:
 - I. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
 - II. Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract of work.*
 - III. If coverage is canceled or non-renewed, and not replaced *with another claims-made policy form with a Retroactive Date prior to the contract effective date*, the Service Provider must purchase "extended reporting" coverage for a minimum of *five (5) years after completion of work.*

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Please make sure that the address listed as Certificate Holder is:

San Francisco Unified School District
135 Van Ness Avenue, Room 102
San Francisco, CA 94102

Broader Coverage: If the Service Provider maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or higher limits maintained by the Service Provider.

Waiver of Subrogation: Service Provider hereby grants to District a waiver of any right to subrogation which any insurer of said Service Provider may acquire against the District by virtue of the payment of any loss under such insurance. Service Provider agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

Notice of Cancellation: Each insurance policy required above shall provide that **coverage shall not be canceled, except with notice to the District.**

Self-Insured Retentions: Self-insured retentions must be declared to and approved by the District. The District may require the Service Provider to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

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 the District.

Verification of Coverage: Service Provider shall furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the District within 30 days of completion of the executed contract. However, failure to obtain the required documents prior to the work beginning shall not waive the Service Provider's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances: District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.