

**Oakland Unified School District
Department of Facilities Planning and Management
955 High Street Oakland CA 94601**

REQUEST FOR QUALIFICATIONS AND PROPOSALS (RFQ/P)

**Commissioning Services
for Central Administrative Center
at Cole Campus (1011 Union Street, Oakland, CA)
and for Various School Sites**

March 23, 2022 (Issued)

Responses must be received April 8, 2022, no later than 2:00 p.m.

The Oakland Unified School District ("District") is requesting proposals from experienced firms, partnerships, corporations, associations, persons or professional organizations ("Consultants") to provide commissioning services associated with the design and construction of a new office building and site development at the Cole Campus and for future school projects.

Interested firms are invited to submit a completed Statement of Qualifications ("SOQ") along with the Fee Proposal (collectively "RFQ/P Packet") as described below, with one (1) unbound original, five (5) bound copies and a PDF version on a flash drive of requested materials to:

Oakland Unified School District
Tadashi Nakadegawa, Deputy Chief
Department of Facilities Planning and Management
955 High Street, Oakland, CA 94601

Oral, telegraphic, facsimile, telephone or email RFQ/P Packets will not be accepted. RFQ/P Packets received after this date and time will not be accepted and returned unopened. The District reserves the right to waive any informalities or irregularities in the RFQ/P Packets. The District also reserves the right to reject any and all RFQ/P Packets and to negotiate contract terms with one or more Respondents.

Due to the circumstances caused by the Covid-19 pandemic, the District will accept electronic Proposals sent via email in lieu of hard copies. Proposals received by the District no later than 2:00 p.m. (Pacific Time) on April 8, 2022 via email will be accepted (to Juanita Hunter at juanita.hunter@ousd.org and the contacts below).

If you have any questions regarding this RFQ/P please email Kenya Chatman at kenya.chatman@ousd.org, and cc: to Colland Jang at colland.jang@ousd.org.

LOCAL, SMALL LOCAL AND SMALL LOCAL RESIDENT BUSINESS ENTERPRISE PROGRAM

District Modification: Based on the availability analysis conducted for this specific RFQ/P, the District is waiving its mandatory Local Business Utilization Policy 7115 requirement for LBE/SLBE/SLRBE certifications.

Schedule of Activities

Listed below is the "Schedule of Activities" which outlines pertinent dates of which firms responding to this solicitation should make themselves aware.

DATE	ACTIVITY
March 23, 2022	RFQ/P Issued.
March 30, 2022	Written requests for Interpretation, Correction or Modification are due.
April 5, 2022	District will provide written responses to requests for clarification.
April 8, 2022	Proposals Due by 2:00 p.m.
TBD	Interviews of Short Listed Firms.
May 25, 2022	Board Meeting – tentative approval of Contract.
May 26, 2022	Tentative Notice to Proceed issued to Consultant.

CENTRAL ADMINISTRATIVE CENTER AT COLE CAMPUS PROJECT:

ESTIMATED CONSTRUCTION BUDGET: \$39.75 Million

PROJECT DURATION: Project Completion by August 2023

VARIOUS SCHOOL SITES:

ESTIMATED CONSTRUCTION BUDGET: TBD

PROJECT DURATION: TBD

REQUEST FOR QUALIFICATIONS & PROPOSALS

The purpose of this RFQ/P is to solicit fee proposals from consulting firms for OUSD's Central Administrative Center at the Cole Campus Project.

In addition, the District is creating a pre-qualified "pool" from interested firms in which OUSD would for future projects solicit fee proposals through an informal procurement process.

A. PROJECT DESCRIPTION

CENTRAL ADMINISTRATIVE CENTER AT COLE CAMPUS PROJECT:

1. Construction of a new 2-story 54,000 s.f. office building to house the Central Office staff and a future educational program.
2. Demolition of three existing structures: a single story 5,118 s.f. cafeteria, a two-story 42,643 s.f. classroom building and a 896 s.f. single story portable.
3. Site improvements to accommodate new parking lot layout and development of site amenities. The site acreage is approximately 2.56 acres.
4. Construction is projected to commence in the Spring of 2022 and completed in the Fall of 2023.
5. DSA approved drawings & specifications and the Basis of Design can be found at the following link:

<https://drive.google.com/drive/folders/0AFk8krCyukEgUk9PVA>

Access to Google Shared Folder shall be granted upon request.

B. BASIC SERVICES

The Consultant agrees to provide the Services described below:

1. The Consultant shall be responsible for the professional quality and technical accuracy of all designs, drawings, specifications and other services furnished by the Consultant under the Agreement as well as design and existing conditions coordination. The Consultant shall, without additional compensation, correct or revise any errors or omissions in its design, drawings, specifications and other Services.
2. The Consultant will use all due care and diligence to confirm that its plans and specifications and all other information provided by or on behalf of the District to potential bidders discloses and publishes any potentially relevant information that could, in any way, have an impact on a Contractor's cost of performance. The Consultant shall advise the District of the most effective methods of identifying and securing such information as part of each stage of design. The Consultant shall track for District's benefit all such suggested and disclosed information.
3. **District Standards.** The Consultant shall, if applicable, incorporate into its work and the work of all Sub-consultants the District standards for facilities and construction at such time as they are adopted.

4. **Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of, or relates in any way to the Services provided under this Agreement, upon the District's request, the Consultant, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Consultant's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation ("Mandatory Assistance").

C. GENERAL STATEMENT OF WORK:

The District is requesting Fee Proposals for the Central Administrative Center at Cole Campus Project that provide a Base Scope for LEED v4.1 Fundamental, California Energy Efficiency Standards Title 24 Part 6 and CalGreen Part 11 Commissioning, Building Envelope Commissioning (BECx), and an Optional Scope for LEED v4.1 Enhanced Commissioning.

Scope for future school projects would potentially be similar to the Central Administrative Center at Cole Campus Project.

Commissioning Authority

- The CxA must be a licensed professional and have documented commissioning process experience on at least two building projects with a similar scope of work (CHPS EE 3.1). The experience must extend from early design phase through at least 10 months of occupancy.
- The CxA may not be an employee of the design or construction firm nor a subcontractor to the construction company.

Intent - Fundamental Commissioning and Verification (Base Scope)

To support the design, construction, and eventual operation of a project that meets the owner's project requirements for energy, water, indoor environmental quality, and durability.

Requirements - Commissioning Process Scope

Complete the following commissioning (Cx) process activities for mechanical, electrical, plumbing, and renewable energy systems and assemblies, in accordance with ASHRAE Guideline 0-2019 (Commissioning Process), ASHRAE/IES Standard 202-2018 (Commissioning Process for Buildings and Systems) and ASHRAE Guideline 1.3-2018 (Building Operations and Maintenance Training for the HVAC&R Commissioning Process), as they relate to energy, water, indoor environmental quality, and durability.

For all new buildings, comply with Title 24 Section 120.8. Comply with Title 24, Part 1, Chapter 10, Section 10-103 for acceptance testing. For all projects, all of the fundamental best practice commissioning procedures must be implemented (CHPS EE 3.0).

CxA shall be an independent, third-party commissioning agent (CHPS EE 3.1). The commissioning agent will be responsible for commissioning the following critical building systems (CHPS EE 3.0):

Plumbing Systems:

- Flow control devices
- Pumping systems
- Domestic hot water systems
- Graywater systems (if applicable)

Mechanical Systems:

- HVAC systems (such as hot water systems, chilled water systems, central air systems, ventilation systems as applicable)
- Energy Management Systems (EMS)

Electrical Systems:

- Lighting systems and lighting controls (daylight, occupancy, timing switches, etc.)

The Prerequisite Commissioning Scope of Services (CHPS EE 3.0) shall include (as applicable to all projects unless noted otherwise):

- Review Owners Project Requirements (OPR (formerly known as Design Intent documentation)) and Basis of Design (BOD) documentation.
- Conduct a focused review of the design prior to the Construction Documents (CDs) Phase (as applicable to future scope for various school sites).
- Perform and deliver a focused review of the CDs when close to completion. Include commissioning requirements in the CDs. CxA shall provide project specifications to be incorporated into the Project Manual. These specifications shall incorporate at a minimum (as applicable to future scope for various school sites):
 - 01 9113 General Commissioning Equipment
 - 23 0800 Commissioning for Plumbing HVAC
 - 23 0900 Instrumentation and Controls for HVAC
 - 26 0800 Commissioning of Electrical Systems
- Develop and utilize a commissioning plan.
- Conduct a selective review of contractor submittals of commissioned equipment.
- Review the Operations & Maintenance Manual.
- Verify installation, functional performance testing (including off-season testing), training, and operations and maintenance documentation. A minimum 20% sampling strategy for testing terminal units and repetitive units is permissible. All major systems must be tested.
- Participate in training of facility staff in accordance with the training plan (OM 1.0).
- Complete a Commissioning Report.
- Conduct a 10-month warranty, post-occupancy review.

Facilities Requirements and Operations & Maintenance Plan

Prepare and maintain a current facilities requirements and operations and maintenance plan that contains the information necessary to operate the building efficiently. The plan must address the preventive and routine maintenance needed. The plan should clearly define who is responsible for performing the task, as well as the overall management of maintenance activities. The plan must include the following:

- A sequence of operations for the building;
- The building occupancy schedule;
- Equipment run-time schedules;
- Setpoints for all HVAC equipment;
- Set lighting levels throughout the building;
- Minimum outside air requirements;

- Any changes in schedules or setpoints for different seasons, days of the week, and times of day;
- A systems narrative describing the mechanical and electrical systems and equipment;
- A preventive maintenance plan for building equipment described in the systems narrative; and
- A commissioning program that includes periodic commissioning requirements, ongoing commissioning tasks, and continuous tasks for critical facilities.

Requirements – Building Envelope Commissioning Process Scope (BECx)

Requirements to fulfill include EA Prerequisite Fundamental Commissioning and Verification as they apply to the building’s enclosure in addition to mechanical and electrical systems and assemblies. Complete the following commissioning process (CxP) activities for the building’s thermal envelope in accordance with ASHRAE Guideline 0–2019 and ASTM E2947-16: Standard Guide for Building Enclosure Commissioning, as they relate to energy, air and water tightness, indoor environmental quality, and durability.

Building Envelope Commissioning Agent Responsibilities:

BECxA shall be an independent, third-party commissioning agent. The commissioning agent will be responsible for building envelope commissioning the following:

Drawing Review of Building Enclosure:

- Review the building enclosure, as applicable, which includes systems separating one defined environment from another, including walls, fenestration, roofing and roof openings, floors and or ceilings, below grade perimeter walls, crawlspaces and attics from the interior, slabs-on-grade and below grade perimeter walls and interior walls and floor/ceiling assemblies separating interior zones with differing performance criteria.

Building Enclosure Commissioning (BECx):

- The process by which the design and constructed performance of building enclosure materials, components assemblies and systems are validated to meet defined objectives and requirements of the project, as established by the District.

Specification Review of Building Enclosure:

- Review specifications including but not limited to Division 7 (thermal/waterproofing), Division 8 (doors/windows) and Division 9 (finishes) relative to the enclosures.

Enclosure Material Submittal Review:

- Assist the architect in reviewing submittals for conformance to the Contract Documents including all roofing and enclosure components.

Glazing Shop Drawing Submittal Review:

- Assist the architect in reviewing glazing shop drawing submittal for conformance to the Contract Documents.

Site Mock-up Attendance:

- Perform limited site observations of selected initial building envelope assemblies and/or mock-ups. Assemblies and/or mock-ups will serve to define the acceptable standard for the Project.

Construction Site Visits:

- Attend field performance (water) tests for the glazing system.
- Provide periodic field observations of the installations and finishes to confirm that the construction of the building envelope components are in general conformance with the standards established through initial site observations and the Contract Documents.

Additional Consultation:

- Provide assistance with RFI's, ASI's and directives related to the façade and waterproofing systems.

Optional Scope – LEED v4 Enhanced Commissioning (Option 1 Path 1)

Project teams that intend to pursue EA Credit Enhanced Commissioning should note a difference in the CxA qualifications: for the credit, the CxA may not be an employee of the design or construction firm nor a subcontractor to the construction firm.

To further support the design, construction, and eventual operation of a project that meets the owner's project requirements for energy, water, indoor environmental quality, and durability.

Enhanced Systems Commissioning Requirements

Implement, or have in place a contract to implement, the following commissioning process activities in addition to those required under EA Prerequisite Fundamental Commissioning and Verification.

Enhanced Systems Commissioning Authority

- The CxA must have documented commissioning process experience on at least two building projects with a similar scope of work. The experience must extend from early design phase through at least 10 months of occupancy;
- The CxA may not be an employee of the design or construction firm nor a subcontractor to the construction firm.

Enhanced Systems Commissioning

Complete the following commissioning process (CxP) activities for mechanical, electrical, plumbing, and renewable energy systems and assemblies in accordance with ASHRAE Guideline 0–2019 and ASHRAE Guideline 1.1–2007 for HVAC&R systems, as they relate to energy, water, indoor environmental quality, and durability.

The commissioning authority must do the following:

- Review Contractor submittals.
- Verify inclusion of systems manual requirements in construction documents.
- Verify inclusion of operator and occupant training requirements in construction documents.
- Verify systems manual updates and delivery.
- Verify operator and occupant training delivery and effectiveness.
- Verify seasonal testing.
- Review building operations during the warranty period, usually 10 months into occupancy.

- Develop an on-going commissioning plan for the facility team throughout the life of the building.

D. LIMITATIONS

This RFQ/P is not an offer by the District to contract with any party responding to this RFQ/P. The District reserves the right to add additional prequalified Respondents for consideration after distribution of this RFQ/P if it is found to be in the best interest of the District. All decisions concerning the selection will be made in the best interests of the District. The awarding of the contract pursuant to this RFQ/P, if at all, is at the sole discretion of the District.

The District makes no representation that participation in the RFQ/P process will lead to an award of contract or any consideration whatsoever. The District shall in no event be responsible for the cost of preparing any RFQ/P Packet in response to this RFQ/P. RFQ/P Packets and any other supporting materials submitted to the District in response to this RFQ/P will not be returned and will become the property of the District unless portions of the materials are designated as proprietary at the time of submittal, and are specifically requested to be returned. Vague designations and/or blanket statements regarding entire pages or documents are insufficient and will not bind the District to protect the designated matter from disclosure. Pursuant to *Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, RFQ/P Packets shall be held confidential by the District and shall not be subject to disclosure under the California Public Records Act until after either: (1) the District and the successful Respondent have completed negotiations and entered into an Agreement, or (2) the District has rejected all Proposals. Furthermore, the District will have no liability to the Respondent or other party as a result of any public disclosure of any RFQ/P Packet.

E. RESTRICTIONS ON LOBBYING AND CONTACTS

From the period beginning on the date of the issuance of this RFQ/P and ending on the date of the award of the contract, no person, or entity submitting in response to this RFQ/P, nor any officer, employee, representative, agent, or consultant representing such a person or entity shall contact through any means or engage in any discussion regarding this RFQ/P, the evaluation or selection process/or the award of the contract with any member of the District, Governing Board, selection members, or any member of the Citizens' Oversight Committee. Any such contact shall be grounds for the disqualification of the Respondent submitting a RFQ/P Packet.

F. STATEMENT OF QUALIFICATIONS

1. General Information / Instructions - Statement of Qualifications

- 1.1.** The District is inviting Statements of Qualifications for the "Project" which shall require coordination, administration, consulting and advice, and related services.
- 1.2.** The District seeks to identify teams with a record of excellence in efficient planning and project delivery.
- 1.3.** The Statement of Qualifications must contain all requested information about the firm and must be on no larger than 8 1/2 x 11 paper and no more than fifteen (15) printed pages. The 15 page limit (as if printed single sided) shall

address Sections 2.1 thru 2.6 below. Statement of Qualifications should be complete and prepared to provide an insightful, straightforward, and concise overview of the capabilities of firm.

2. Content – Statement of Qualifications

- 2.1. Letter of Interest** - A dated Letter of Interest must be submitted, including the legal name of the firm(s), address, telephone and fax numbers, and the name, title, and signature of the person(s) authorized to submit the Statement of Qualifications on behalf of the firm. The Letter of Interest should provide a brief statement of firm's experience indicating the unique background and qualities of the firm, its personnel, and its sub-consultants, and what will make the firm a good fit for work in the District. The letter shall also include the following statements:

"[RESPONDENT'S NAME] received a copy of the District's Agreement attached as **EXHIBIT A** to the RFQ/P. [RESPONDENT'S NAME] has reviewed the indemnity provisions in **EXHIBIT A** and insurance requirements contained in the Agreement. If given the opportunity to contract with the District, [RESPONDENT'S NAME] has no objections to the use of the Agreement."

Respondent shall certify that no official or employee of the District, nor any business entity in which an official of the District has an interest, has been employed or retained to solicit or assist in the procuring of the resulting contract(s), nor that any such person will be employed in the performance of any/all contract(s) without immediate divulgence of this fact to the District.

- 2.2. Table of Contents** - A table of contents of the material contained in the Statement of Qualifications should follow the Letter of Interest.

- 2.3. Executive Summary** - The Executive Summary should contain an outline of firm's approach, along with a brief summary of firm's qualifications. Firms interested in being considered for the Central Administrative Center at Cole Campus Project shall clearly indicate that interest and provide a detailed fee proposal.

Firms interested in being included in the District's pre-qualified "as-needed pool" shall expressly indicate that interest.

2.4. Firm Information

Narrative - Provide a comprehensive narrative of the services offered by firm. The narrative should include all of the following:

- 2.4.1.** Provide a brief history of firm, team firms, and, if a joint venture, of each participating firm. Identify legal form, ownership, and senior officials of company(ies). Describe number of years in business and types of business conducted.
- 2.4.2.** Describe firm's philosophy and how it will work with District administration officials, community partners and district facilities staff.

- 2.4.3. Discuss the firm's/team's ability to meet schedules for comparable projects, firm's schedule management procedures, and how the firm has successfully handled potential agency approval delays.
- 2.4.4. Identify school district and relevant building type projects performed by firm in the past three (3) years. Limit response to no more than the twenty (20) most recent projects. Please include the following information for each project:
 - 2.4.4.1. Name of project and client,
 - 2.4.4.2. Scope of projects, description of services provided,
 - 2.4.4.3. Contact person, telephone number and email address,
 - 2.4.4.4. Firm person in charge of each project,
 - 2.4.4.5. Construction dollar value of each project,

2.5 Litigation - All litigation arising from the project, if any, in the past five years. State the issues in the litigation, the status of litigation, names of parties, and outcome.

2.6 Professional Fees

Firms interested in being considered for the Central Administrative Center at Cole Campus Project shall clearly indicate that interest and provide a detailed lump sum fee proposal.

The Lump Sum Fee shall include a detailed breakdown indicating Basic Services, Optional Services and Reimbursable Expenses.

Include a line item for a 10% contingency to the proposed not-to-exceed Lump Sum Fee. The contingency will be to cover potential additional services and shall be subject to District approval.

Provide a detailed schedule of the Consultant's and Sub-consultant's hourly billing rates and a breakdown of associated costs for all tasks proposed (including contingency costs per task). Provide hourly billing rate schedule as it would apply to future school projects.

2.7 Additional Data - Provide additional information about the firm as it may relate to the Statement of Qualifications. These may include letters of reference or testimonials. Indicate ongoing commitment to professional education of staff, total number of permanent employees, and any other data that may assist the District in understanding firm's qualifications, capacity and/or expertise. This additional data shall be in an Appendix and will not be counted in the fifteen page SOQ limit.

3 Local, Small Local and Small Local Resident Business Enterprise Program

District Modification: Based on the availability analysis conducted for this specific RFQ/P, the District is waiving its mandatory Local Business Utilization Policy 7115 requirement for LBE/SLBE/SLRBE certifications.

G. District's Evaluation / Selection Process – Statement of Qualifications

- 1.** Submittals will be reviewed for responsiveness and evaluated pursuant to established objective criteria, with particular attention to, without limitation, each respondent's qualifications, demonstrated competence in like construction, and the Firm's ability to integrate its personnel with the District's staff and consultants.
- 2.** After the submittals are evaluated and/or ranked, the District, at its sole discretion, may elect to interview the top Firm(s). The District may elect to interview one or more Firms. Interviews are tentatively scheduled as indicated above. Any firm(s) selected for interviews must make available for interview the key personnel it intends to assign to the District's Project(s). Any comments or objections to the form of Agreement attached hereto as **EXHIBIT A** to this RFQ/P shall be provided in writing before the interview and may be the subject of inquiry at the interview. Any comments or objections to the form of Agreement not provided in writing before the interview will not be entertained by the District. Adequate time will be allowed for presentation of qualifications followed by questions and answers.
- 3. District Investigations** - The District may check references, and may perform investigations of firm that extend beyond the information in the proposals. The District may conduct interviews of firms.

H. Final Determination And Award

The District reserves the right to contract with any entity responding to this RFQ/P, to reject any proposal as non-responsive, and not to contract with any firm for the services described herein. The District reserves the right to seek proposals from or to contract with any firm not participating in this process. The District reserves the right to reject any or all submissions, to request further information, to negotiate with any firm, to extend the submission deadline, or to amend or cancel in part or in its entirety this RFQ/P. This RFQ/P does not commit the District to award a contract or to reimburse any firm for costs incurred in submitting a proposal.

The awarding of contract(s) is at the sole discretion of the District. The District may, at its option, determine to award contracts only for portions of the scope of work. In such case, the successful proposing firm will be given the option not to agree to enter into the Agreement and the District will retain the right to negotiate with any other proposing firm selected as a finalist. If no finalist is willing to enter into a contract for the reduced scope of work, the District will retain the right to enter into negotiations with any other Respondent responding to this RFQ/P.

The RFQ/P packet, and any other supporting materials submitted to the District in response to this RFQ/P will not be returned and will become the property of the District unless portions of the materials are designated as proprietary at the time of submittal, and are specifically requested to be returned. This RFQ/P does not commit the District to negotiate an agreement with any proposing firm or individual.

END OF RFQ/P

EXHIBIT A

OAKLAND UNIFIED SCHOOL DISTRICT GENERAL SERVICES AGREEMENT

This GENERAL SERVICES AGREEMENT (“Agreement”) is made and entered into effective _____, 20__ (the “Effective Date”), by and between the Oakland Unified School District (“District”) and _____ (“Contractor”).

1. **Contractor Services.** Contractor agrees to provide the following services to District (collectively, the “Basic Services”) for the _____ project (“Project”):

_____.

The Basic Services include all work described in the _____, 20__, proposal, and the _____, 20__, Request for Proposals, which are attached to this Agreement as *Exhibit A*. **[Modify the previous sentence as necessary. It is critical to fully describe the detailed services required of the contractor. If nothing will be attached as Exhibit A, then delete the sentence, and delete the cover page below for Exhibit A.]** Contractor may only provide other services related to the Project (“Additional Services”) after authorized in writing by District. “Services” shall mean Basic and Additional Services.

2. **Contractor Qualifications.** Contractor represents and warrants to District that Contractor, and all of Contractor’s employees, agents or volunteers (the “Contractor Parties”), have in effect and shall maintain in full force throughout the Term of this Agreement all licenses, credentials, permits and any other qualifications required by law to perform the Services and to fully and faithfully satisfy all of the terms set forth in this Agreement. Contractor and any Contractor Parties performing services shall be competent to perform those services.

3. **Term.** **[Select one of the following paragraphs, depending on whether the term shall end on a specific date or last as long as a particular project]**

The term for performance of the Services shall be the duration of the Project (“Term”), except as otherwise stated in Section 4 below, and Contractor shall complete the Services within the Term. There shall be no extension of the Term without an amendment signed by all Parties and approved by the District’s governing board. Written notice by the District Superintendent or designee shall be sufficient to stop further performance of the Services by Contractor or the Contractor Parties. In the event of early termination, Contractor shall be paid for satisfactory Services performed to the date of termination. Upon payment by District, District shall be under no further obligation to Contractor, monetarily or otherwise, and District may proceed with the work in any manner District deems proper.

OR

The term for performance of the Services shall begin on _____, 20__, and shall end on _____, 20__ (“Term”), except as otherwise stated in Section 4 below, and Contractor shall complete the Services within the Term. There shall be no extension of the Term without an amendment signed by all Parties and approved by the District’s governing board. Written notice by the District Superintendent or designee shall be sufficient to stop further performance of the Services by

Contractor or the Contractor Parties. In the event of early termination, Contractor shall be paid for satisfactory Services performed to the date of termination. Upon payment by District, District shall be under no further obligation to Contractor, monetarily or otherwise, and District may proceed with the work in any manner District deems proper.

4. **Termination.** Either party may terminate this Agreement at any time by giving thirty (30) days advance written notice to the other party. Notwithstanding the foregoing, District may terminate this Agreement at any time by giving written notice to Contractor if Contractor materially breaches any of the terms of this Agreement, any act or omission of Contractor or the Contractor Parties exposes District to potential liability or may cause an increase in District's insurance premiums, Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed because of Contractor's insolvency. Such termination shall be effective immediately upon Contractor's receipt of the notice.

5. **Payment of Fees for Services.** District agrees to pay Contractor based on the hourly rates listed in *Exhibit B* for Services satisfactorily performed. Contractor shall not increase these hourly rates over the course of this Agreement. Total fees paid by District to Contractor for Services under the Agreement shall not exceed _____ Dollars (\$ _____), which consists of a not-to-exceed amount of _____ Dollars (\$ _____) for performance of the Basic Services, and a not-to-exceed amount of _____ Dollars (\$ _____) for performance of any Additional Services. Contractor shall perform all Services required by the Agreement even if the applicable not-to-exceed amount has already been paid and no more payments will be forthcoming. District agrees to make payment within sixty (60) days of receipt of a detailed invoice from Contractor based on hours worked and hourly rates, including any additional supporting documentation that District reasonably requests. Contractor shall not submit its invoices to District more frequently than monthly.

[If the fee for performance of the Services is a lump sum (rather than not-to-exceed), then delete the above paragraph and use the following:]

5. **Payment of Fees for Services.** District agrees to pay Contractor based on a lump sum price for Basic Services satisfactorily performed, and based on the hourly rates listed in *Exhibit B* for any Additional Services satisfactorily performed. Contractor shall not increase these hourly rates over the course of this Agreement. Total fees paid by District to Contractor for Services under the Agreement shall not exceed _____ Dollars (\$ _____), which consists of a lump sum of _____ Dollars (\$ _____) for performance of the Basic Services, and a not-to-exceed contingency of _____ Dollars (\$ _____) for performance of any Additional Services. District agrees to make payment for Basic Services within sixty (60) days of receipt of a detailed invoice from Contractor based on percentage of work completed, including any additional supporting documentation that District reasonably requests. District agrees to make payment for Additional Services within sixty (60) days of receipt of a detailed invoice from Contractor based on hours worked and hourly rates, including any additional supporting documentation that District reasonably requests. Contractor shall not submit its invoices to District more frequently than monthly.

5.1. **Reimbursement for Certain Expenses.** District shall reimburse Contractor for Reimbursable Expenses (defined below). Contractor's total reimbursement for Reimbursable Expenses shall not exceed \$ _____, which is Contractor's estimate of the maximum total cost of Reimbursable Expenses for performance of the Services. Any expenses incurred by Contractor in excess of the Reimbursable Expenses amount set forth above shall not be compensated. District agrees to pay Reimbursable Expenses, up to the maximum amount provided herein, within sixty (60) days of receipt of a detailed invoice from Contractor, including any additional supporting documentation District reasonably requests. "Reimbursable Expenses" means Contractor's actual out-of-pocket expenses, without markup, incurred in performance of the Services, including fax, reproduction expense (excluding expense for reproduction for Contractor's office use), postage, messenger, transportation, living expenses in connection with out-of-town travel, and long distance communications. Reimbursable Expenses do not include indirect costs, such as general overhead (for example, home office overhead, including technology hardware and software, or insurance premiums); nor do they include expenses incurred in connection with services that result from Contractor's wrongful acts or omissions. ***[If no reimbursable expenses will be paid to the contractor, then delete all of Section 5.1 and insert the following at the end of Section 5 above: Contractor shall not be reimbursed directly for any of its expenses, as the fees to be paid under this Agreement include compensation for any and all of Contractor's expenses.]***

6. **Indemnity.** Contractor shall defend, indemnify, and hold harmless District and its agents, representatives, officers, consultants, employees, Board of Trustees, members of the Board of Trustees (collectively, the "District Parties"), from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to attorney fees and costs including fees of consultants) of any kind, nature and description (collectively, the "Claims") directly or indirectly arising out of, connected with, or resulting from any act, error, omission, negligence, or willful misconduct of Contractor, the Contractor Parties or their respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees in the performance of or failure to perform Contractor's obligations under this Agreement, including, but not limited to Contractor's or the Contractor Parties' use of the site, Contractor's or the Contractor Parties' performance of the Services, Contractor's or the Contractor Parties' breach of any of the representations or warranties contained in this Agreement, or for injury to or death of persons or damage to property or delay or damage to the District or the District Parties. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph.

7. **Equipment and Materials.** Contractor at its sole cost and expense shall provide and furnish all tools, labor, materials, equipment, transportation services and any other items (collectively, "Equipment") which are required or necessary to perform the Services in a manner which is consistent with generally accepted standards of the profession for similar services. Notwithstanding the foregoing, 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 or the Contractor Parties, even if such Equipment is furnished, rented or loaned to Contractor or the Contractor Parties by District. Furthermore, District may reject any Equipment or workmanship that does not conform to the requirements of this Agreement and Contractor must then promptly remedy or replace it at no additional cost to District and subject to District's reasonable satisfaction.

8. **Insurance.** Without in any way limiting Contractor's liability, or indemnification obligations set forth in Paragraph 6 above, Contractor shall secure and maintain throughout the Term of this

Agreement the following insurance: (i) comprehensive general liability insurance with limits of not less than \$ _____ each occurrence and \$ _____ in the aggregate; (ii) commercial automobile liability insurance with limits not less than \$ _____ each occurrence and \$ _____ in the aggregate, if applicable; and (iii) worker's compensation insurance as required by Labor Code section 3200, *et seq.*, if applicable. Neither Contractor nor any of the Contractor Parties shall commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverages have been delivered to and approved by District. All insurance policies shall include an endorsement stating that District and District Parties are named additional insureds. All of the policies shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to District. If such a notice is not given or even if District receives a notice, District may, at its sole option, terminate this Agreement. All insurance policies shall include an endorsement stating that it is primary to any insurance or self-insurance maintained by District and shall waive all rights of subrogation against District and/or the District Parties. A copy of the declarations page of Contractor's insurance policies shall be attached to this Agreement as proof of insurance.

9. **Independent Contractor Status.** Contractor is engaged in an independently established trade, occupation, or business to provide the Services required by this Agreement and is hereby retained to provide specialized services for District that are outside the usual course of District's business. Contractor is free from the control and direction of District in connection with the manner in which it provides the Services to District. Contractor understands and agrees that Contractor and the Contractor Parties shall not be considered officers, employees, agents, partners, or joint venturers of District, and are not entitled to benefits of any kind or nature normally provided to employees of District and/or to which District's employees are normally entitled.

10. **Taxes.** All payments made by District to Contractor pursuant to this Agreement shall be reported to the applicable federal and state taxing authorities as required. District will not withhold any money from fees payable to Contractor, including FICA (social security), state or federal unemployment insurance contributions, or state or federal income tax or disability insurance. Contractor 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 Contractor and the Contractor Parties and otherwise in connection with this Agreement.

11. **Fingerprinting/Criminal Background Investigation Certification.** Contractor and the Contractor Parties shall at all times comply with the fingerprinting and criminal background investigation requirements of the California Education Code ("Education Code") section 45125.1. Contractor further agrees and acknowledges that if at any time during the Term of this Agreement Contractor learns or becomes aware of additional information which differs in any way from the information learned or provided pursuant to Section 45125.1, or Contractor or Contractor Parties add personnel who will provide Services under this Agreement, Contractor shall immediately notify District and prohibit any new personnel from interacting with District students until the fingerprinting and background check requirements have been satisfied and District determines whether any interaction is permissible.

12. **Tuberculosis Certification.** Contractor and the Contractor Parties shall at all times comply with

the tuberculosis (“TB”) certification requirements of Education Code section 49406. Accordingly, by checking the applicable boxes below, Contractor hereby represents and warrants to District the following:

A. Contractor and Contractor Parties shall **only have limited or no contact** (as determined by District) with District students at all times during the Term of this Agreement.

B. The following Contractor and Contractor Parties shall have **more than limited contact** (as determined by District) with District students during the Term of this Agreement and, at no cost to District, have received a TB test in full compliance with the requirements of Education Code section 49406:

_____. [Attach and sign additional pages, as needed.]

Contractor shall maintain on file the certificates showing that the Contractor and Contractor Parties were examined and found free from active TB. These forms 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 by Contractor and Contractor Parties 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 and District determines whether any contact is permissible.

13. **Confidential Information.** Contractor shall maintain the confidentiality of, and protect from unauthorized disclosure, any and all individual student information received from the District, including but not limited to student names and other identifying information. Contractor shall not use such student information for any purpose other than carrying out the obligations under this Agreement. Upon termination of this Agreement, Contractor shall turn over to District all educational records related to the services provided to any District student pursuant to this Agreement.

14. **Assignment/Successors and Assigns.** Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of District. Subject to the foregoing, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

15. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

16. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by both parties and approved by the governing board.

17. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its choice of law rules. Any action or proceeding seeking any

relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Alameda, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

18. **Written Notice.** Written notice shall be deemed to have been duly served if delivered in person to Contractor at the address located next to the party signatures below, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who sends the notice.

19. **Compliance with Law.** Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. Contractor shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances, including but not limited to fingerprinting under Education Code section 45125.1, confidentiality of records, Education Code section 49406 and others. Contractor agrees that it shall comply with all legal requirements for the performance of duties under this Agreement and that failure to do so shall constitute material breach.

20. **Non-Discrimination.** There shall be no unlawful discrimination in the contracting of persons under this Agreement because of race, color, national origin, age, ancestry, religion, sex, or sexual orientation of such persons.

21. **Attorneys' Fees.** If any legal action is taken to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other reasonable costs and expenses incurred in connection with that legal action.

22. **Liability of District.** Notwithstanding anything stated herein to the contrary, 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.

23. **Time.** Time is of the essence for performance of the Services under this Agreement.

24. **Waiver.** No delay or omission by District in exercising any right under this Agreement shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude the District from any or further exercise of any right or remedy.

25. **Entire Agreement.** This Agreement is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms.

26. **Ambiguity.** The parties to this Agreement, and each of them, hereby represent that the language contained herein is to be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all parties shall be treated as equally responsible for such ambiguity.

27. **Execution of Other Documents.** The parties to this Agreement shall cooperate fully in the

execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

28. **Execution in Counterparts.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, facsimile, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

29. **Warranty of Authority.** The persons who have signed this Agreement warrant that they are legally authorized to do so on behalf of the respective parties, and by their signatures to bind the respective parties to this Agreement.

30. **Local Business.** Contractor shall comply with the requirements of the District’s Local, Small Local, and Small Local Resident Business Enterprise Program, which may require a 50% minimum local participation requirement in the performance of this Agreement. A copy of this program may be obtained at www.ousd.k12.ca.us, under the Facilities Planning & Management Department drop down menu, at “Bids and Requests for Proposals.”

31. **Forms.** The following forms, attached to the proposal, are incorporated into the contract:

- Roof project certification (if required; see Public Contract Code §3006).
- Fingerprinting Notice and Acknowledgement.
- Iran Contracting Act Certification.
- Workers’ Compensation Certification.
- Drug-Free Workplace Certification.
- Buy American Certification.
- Local Business Participation Form.

Within ten (10) days after award and before commencement of the services, the signed agreement and insurance documentation shall be submitted to the District.

32. **Mediation.** A party to this Agreement shall, as a condition precedent to initiating any litigation against the other party, demand mediation of any dispute. The parties shall endeavor to include any third party claimant in the mediation. The parties shall select a mediator and schedule the mediation within thirty (30) days of the initial demand for mediation. If the parties cannot agree on a mediator, the mediator shall be appointed by JAMS. The parties to the mediation, including the parties to this Agreement, shall pay equal shares of the mediator’s fees. Each party shall bear its own attorney’s fees related to the mediation.

* * * * *

DISTRICT:

CONTRACTOR:

OAKLAND UNIFIED SCHOOL DISTRICT

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Address for District Notices:

Address for Contractor Notices:

Approved As To Form:

OUSD Facilities Legal Counsel

Date

Exhibit A

Proposal

Exhibit B

Hourly Rates