

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

REQUEST FOR QUALIFICATIONS AND PROPOSALS (RFQ/P)

**Material Testing and Special Inspection Services
for Various Measure Y Bond Program School Sites**

October 27, 2021 (Issued)

Responses must be received November 12, 2021, 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 Material Testing and Special Inspection Services associated with various Measure Y Bond Program school projects ("Project"). Upcoming projects requiring Material Testing and Special Inspection Services include those currently in the design phases at Castlemont High School, Claremont Middle School and Laurel Child Development Center.

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 wet-signed 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 and telephone 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. (local time) on November 12, 2021 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, Executive Director of Facilities 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 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
October 27, 2021	RFQ/P Issued.
-	-
-	-
November 3, 2021	Written requests for Interpretation, Correction or Modification are due.
November 9, 2021	District will provide written responses to requests for clarification.
November 12, 2021	Proposals Due by 2:00 p.m.
November 19, 2021 (tentative)	Notification of inclusion in pre-qualified "pool"
-	-
-	-

ESTIMATED CONSTRUCTION BUDGET: TBD

PROJECT DURATION: TBD

REQUEST FOR QUALIFICATIONS & PROPOSALS

The primary purpose of this RFQ/P is to obtain statements of qualification to create a pre-qualified pool of consultants for Measure Y Bond Program projects at various school sites. Firms submitting for inclusion in the pre-qualified pool shall submit a comprehensive Statement of Qualifications ("SOQ"). For future projects, OUSD may then elect to solicit fee proposals from this pre-qualified pool through its informal procurement process.

The second purpose of this RFQ/P is provide general information on upcoming projects (i.e., Castlemont High School, Claremont Middle School and Laurel CDC) which the District will subsequently solicit fee proposals from consulting firms.

A. PROJECT DESCRIPTIONS

1. VARIOUS SCHOOL SITES

- The District plans to construct various projects on District-owned sites located in Oakland, Alameda County, California (to be referred to in this RFQ/P as "the Project").
- The District educates approximately 35,500 students at eighty-one (81) school sites located in the City of Oakland; in addition there are 16,500 students in Oakland public charter schools with 43 charter schools in District authorized facilities. Voters within the District have overwhelmingly supported the modernization and reconstruction of the District's schools. The District is about to commence the capital program as a part of the Measure Y Bond ("Measure Y Program") passed in November 2020 and has ongoing need for assistance with the planning, pre-design, design and construction phases of work on major renovation/reconstruction of its elementary, secondary and high schools.
- Attached to this Request for Qualifications/Proposals ("RFQ/P") is the District's List of Bond Projects as reflected in the approved bond measure that highlights the scopes and estimated costs of Measure Y Bond Program projects (see Attachment 1).

2. CASTEMONT HIGH SCHOOL SPORTS FIELD AND BLEACHERS PROJECT:

- The Project includes the replacement of an outdoor athletic field, track and specialty athletic sport areas, and bleachers. The new bleachers will seat 1500 people. The two existing restroom facilities will be upgraded and new single occupancy accessible restroom facilities will be added adjacent to the existing restroom structures at the north and south plazas.
- Accessible parking and path of travel improvements to the new work will be included in the Project.

3. CLAREMONT MIDDLE SCHOOL MULTI-PURPOSE BUILDING

- Construction of a new single story 9,544 s.f. multi-purpose building with a kitchen. The multi-purpose building among other uses will function as the school's cafeteria. Assembly space will be striped and equipped for basketball.
- Project scope also includes campus wide replacement of the intrusion alarm system and replacement of partitions with full-height permanent walls at Building "A" classrooms 4/5, 6/7 and 9/10.

4. LAUREL CHILD DEVELOPMENT CENTER

- Demolition of an existing single-story modular building (approximately 7,400 s.f.) and associated play areas.
- Construction of a new single-story building that provides the equivalent spatial program as the existing that includes five (5) pre-school classrooms, administrative offices, kitchen and ancillary spaces.
- Site improvements include, but not limited to, underground utilities, retaining walls, play structure, landscaping, hardscape, bioswale, artificial turf playfield and public right-of-way improvements.

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 reports, 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 reports, design, drawings, specifications and other Services.
2. The Consultant will use all due care and diligence to confirm that its reports, 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, as applicable, shall 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. STATEMENT OF WORK:

1. Qualifications of the Material Testing and Special Inspection Firms

The District is seeking strong experience in testing and inspections for the construction type and size of projects identified, California K-12, DSA and school construction experience. The ability to be promptly responsive to requests for testing and inspection, the ability to dedicate personnel to the project for the sake of continuity, and ability to provide services efficiently are also criteria for selection.

Inspectors must have relevant qualifications for the type of testing or inspection they perform. Testing Laboratory personnel shall be certified by ICBO for the type of work they are performing and shall be accepted by DSA prior to performance of any work on or off the project site. The laboratory must have been in operation for a minimum of five (5) years within the State of California.

2. DSA 103-19: Listing of Structural Tests & Special Inspections (Soils) 2019 CBC

Refer to attachment dated June 2, 2020 for the list of structural tests and special inspections submitted to DSA by the Architect for the Project. The District has retained the services of geotechnical engineer who shall be responsible for the tests and special inspections listed in DSA 103-19 and for submitting form DSA 293. Project approval by DSA is pending.

3. Duties of the Laboratory of Record related to the use of form DSA 152 and DSA 152-IPI are as follows (per DSA PR 13-01):

- Meet with the project inspector, in-plant inspector (when applicable), design professionals, and the contractor as needed to mutually communicate and understand the structural/material and fire/life safety testing and inspection program, and the methods of communication appropriate for the project.
- Obtain a copy of the DSA-approved construction documents from the design professional in general responsible charge prior to the commencement of construction.
- Obtain a copy of the DSA-approved List of Required Structural Tests and Special Inspections (form DSA-103) from the design professional in general responsible charge prior to the commencement of construction.
- Report all project-related activities to the project inspector. The project inspector is responsible for monitoring the work of the Laboratory of Record and special inspectors to ensure the testing and special inspection program is satisfactorily completed. Coordinate with the project inspector to develop a schedule, based on the construction schedule, to complete the testing and special inspection program.
- Provide material testing as identified in the DSA-approved construction documents.
- Submit test reports to the project inspector within one work day of the day the tests were performed for any tests performed on-site.
- Submit material test reports in a timely manner such that construction is not delayed and not to exceed seven calendar days from the date the material tests were performed. Test reports are to be submitted to the project inspector, architect, structural engineer, and the school district and, when requested, to DSA. As a convenience, and if agreed upon by involved parties, the test reports may be submitted electronically as identified in *DSA PR 13-01 Section 4* of this procedure.
- Immediately submit reports of material tests not conforming to the requirements of the DSA-approved construction documents. These reports shall be submitted to DSA, the architect, structural engineer, project inspector and the school district.
- The engineering manager shall submit an interim Laboratory of Record Verified Report (form DSA 291) as prescribed in *DSA PR 13-01 Section 4*.

The reports are required to be submitted when any of the following events occur:

- Within 14 days of the completion of the material testing/special inspection program.
 - Work on the project is suspended for a period of more than one month.
 - The services of the Laboratory of Record are terminated for any reason prior to completion of the project.
 - DSA requests a verified report. (See interim verified reports below. This is a "DSA request.")
- The engineering manager shall submit an interim verified report (form DSA 291) as prescribed in *DSA PR 13-01 Section 4* for each of the applicable sections of the form DSA 152, prior to the project inspector signing off that section of the project inspection card, if that section required material testing. (Interim verified reports are not required for the DSA 152-IPI unless the Laboratory of Record employs welding special inspectors for in-plant special inspection; see *DSA PR 13-01 Section 1.7* for verified report requirements.) The sections are:
 1. Initial Site Work and Foundation Prep.
 2. Vertical and Horizontal Framing.
 3. Appurtenances.
 4. Finish Site Work and Other Work.

4. Duties of Special Inspectors, employed by the Laboratory of Record, related to the use of form DSA 152 and DSA 152-IPI are as follows (per DSA PR 13-01):

- Meet with the project inspector, design professionals, and the contractor as needed to mutually communicate and understand the structural/material and fire/life safety testing and inspection program, and the methods of communication appropriate for the project.
- Report all project-related activities to the project inspector. The project inspector is responsible for monitoring the work of the Laboratory of Record and special inspectors to ensure the testing and special inspection program is satisfactorily completed.
- Perform work under the supervision of the engineering manager for the Laboratory of Record.
- Perform inspections in conformance with the DSA-approved construction documents, applicable codes and code reference standards.
- Prepare detailed daily inspection reports outlining the work inspected and provide the project inspector a copy of the reports within one day of the day the inspections were performed.
- Immediately submit reports of materials or work not conforming to the requirements of the DSA-approved construction documents. These reports shall be submitted to DSA, the architect, structural engineer, project inspector and the school district.
- Submit daily special inspection reports in a timely manner such that construction is not delayed and not to exceed seven days from the date the special inspections were performed. The reports are to be submitted to the architect, structural engineer, and the school district. As a convenience, and if agreed upon by involved parties, the special inspection reports may be submitted electronically as identified in *DSA PR 13-01 Section 4* of this procedure.
- The engineering manager for the Laboratory of Record shall submit verified report form DSA 291 as prescribed in *DSA PR 13-01 Section 4*. Unlike special

inspectors independently contracting directly with the school district, the verified report form DSA 292 is not required since the form DSA 291 covers special inspections made by laboratory employed special inspectors.

The reports are required to be submitted upon any of the following events occurring:

- Within 14 days of the completion of the special inspection work.
 - Work on the project is suspended for a period of more than one month.
 - The services of the special inspector are terminated for any reason prior to completion of the project.
 - DSA requests a verified report (see interim verified reports below; this is a *DSA request*).
- The engineering manager for the Laboratory of Record shall submit an interim verified report (form DSA 291) as prescribed in *DSA PR 13-01 Section 4* for each of the applicable sections of the form DSA 152, prior to signing off that section of the Project Inspection Card, if that section required special inspections. (Interim verified reports are not required for the DSA 152-IP unless another special inspector, employed by the Laboratory of Record or independently and directly with the school board, performs welding special inspection; see *DSA PR 13-01 Section 1.7* for verified report requirements). The sections are:
 1. Initial Site Work and Foundation Prep.
 2. Vertical and Horizontal Framing.
 3. Appurtenances.
 4. Finish Site Work and Other Work.

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 in length. The 15 page limit (as if printed single sided) shall cover Sections 2.1 thru 2.4 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, email address(es) 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 Project clearly indicate that interest and provide a lump sum fee proposal with a detailed breakdown.
- 2.4. Firm Information** - 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.** 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.
 - 2.4.3.** 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 (2.4.3.1 thru 2.2.3.5):
 - 2.4.3.1.** Name of project and client,
 - 2.4.3.2.** Scope of projects, description of services provided,
 - 2.4.3.3.** Contact person, telephone number and email address,
 - 2.4.3.4.** Firm person in charge of each project,
 - 2.4.3.5.** Construction dollar value of each project,
 - 2.4.4.** All litigation arising from any project within the last five years. State the issues in the litigation, the status of litigation, names of parties, and outcome.
- 2.5. 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.

Professional Fees - 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). Also note the time period that the fee schedule would apply.

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 “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.** This Agreement shall begin on _____, 20____, and shall terminate upon completion of the Services, but no later than _____ (“Term”), except as otherwise stated in **Paragraph 4** below. There shall be no extension of the Term of this Agreement without the express written consent of all parties. 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, however the parties may agree in writing to a shorter notice period. 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 fees at the rate of \$ _____ per _____ for Services satisfactorily performed *[require attachment of a schedule of all applicable hourly fees, if necessary]*. Contractor shall not increase the rate over the course of this Agreement. Total fees paid by District to Contractor for Services under the Agreement shall not exceed \$ _____ (the “Fee”). Contractor shall perform all Services required by the Agreement even if the Fee has already been paid and no more payments will be forthcoming. District agrees to pay the Fee, 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.

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 \$ 1,000,000 each occurrence and \$2,000,000 in the aggregate; (ii) commercial automobile liability insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 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, and shall complete the Fingerprinting Notice and Acknowledgement Form and Student Contract Form.

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 to 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, insurance documentation, and Student Contract Form (see Exhibit B to the Fingerprinting Notice and Acknowledgement) 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.

IN WITNESS WHEREEOF, the Parties hereto have executed this Agreement on the date indicated below:

DISTRICT:

OAKLAND UNIFIED SCHOOL DISTRICT

_____ Date
Aimee Eng, President, Board of Education

_____ Date
Kyla Johnson-Trammell,
Superintendent & Secretary, Board of Education

CONTRACTOR:

Name: _____

Title: _____

Name: Tadashi Nakadegawa Date
Acting Deputy Chief, Facilities Planning & Management

Approved As To Form:

OUSD Facilities Legal Counsel Date