

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

REQUEST FOR QUALIFICATIONS AND PROPOSALS (RFQ/P)

**Security Services
for Various School Sites under Construction**

March 16, 2022 (Issued)

Responses must be received April 14, 2022, no later than 2:00 p.m.

The Oakland Unified School District ("District") is requesting proposals from qualified security companies ("Security Contractors") for professional security services associated with various school sites under construction ("Project"). Specific services shall include but not limited to providing roving patrol with uniformed personnel for security, fire and safety monitoring plus discovering and reporting persons attempting to gain unauthorized access to the property.

Interested companies 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. (Pacific Time) on April 14, 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, Executive Facilities Director 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

The Local Business Utilization Policy 7115 requires that there is a mandatory fifty percent (50%) LBU participation with a 25% or less Local Business (LBE) participation and a 25% or more Small Local or Small Local Resident Business (SLBE/SLRBE) participation for all capital program/construction-related contracts and professional services agreements.

District Modification for this RFQ/P only: Based on the availability analysis conducted to create the pre-qualified pool of companies that provide security services, the District has waived the entire 25% SLBE/SLRBE requirement. The minimum local business utilization requirement of 50% is still applicable for this RFQ/P and can be met with a 50% LBE participation.

On April 28, 2021, the Board of Education amended the Local Business Policy which had named the City of Oakland as the singular agency to certify local businesses to include five additional local business certifications. For businesses located in Oakland, Local Business and Small Local Business certifications may also be accepted from the Port of Oakland, Alameda County Transportation Commission, Alameda County Department of General Services, US Department of Transportation California Unified Certification Program, and the California Public Utilities Commission.

The District will follow the City of Oakland Small Business size standards in recognizing Small Local and Small Local Resident Businesses.

The full version of OUSD's latest Local, Small Local and Small Local Resident Business Enterprise Program can be found by going to the OUSD home page: ousd.org> Offices and Depts> Facilities Planning & Management Department> Opportunities> Local Business Utilization (LBU) Policy> 2021 Policy Amendment

Schedule of Activities

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

DATE	ACTIVITY
March 16, 2022	RFQ/P Issued.
March 24, 2022	Written requests for Interpretation, Correction or Modification are due by 4:00 p.m. (Pacific Time)
March 31, 2022	District will provide written responses to requests for clarification.
April 14, 2022	Proposals Due by 2:00 p.m. (Pacific Time)
April 28, 2022 (tentative)	Notification of Status for the Pre-qualified Pool of Companies.

PROJECT DURATION: TBD

REQUEST FOR QUALIFICATIONS & PROPOSALS

The purpose of this RFQ/P is to compile statement of qualifications and schedule of fees for security services from companies ("Security Contractors") for various school sites that will be under construction. Specific school sites have not been determined at this time. The selection process will pre-qualify companies that the District will request fee proposals once projects have been identified.

The successful company that submitted a fee proposal will be required to provide appropriately trained professional security personnel as well as requisite equipment to perform security services for the existing building that may remain partially in use and while the new project is under construction during the period of time the site is unoccupied. The District is requesting unarmed roving patrol coverage.

A. PROJECT DESCRIPTION

1. General Contractor shall typically be on site Monday thru Friday from 6:00 a.m. thru 3:00 p.m. The Security Contractor shall have personnel on site at least half an hour prior to the General Contractor leaving the site at and remain on site at least half an hour after the General Contractor arrives at the site. The Security Contractor shall have personnel on site for weekend coverage starting on Friday at 2:30 p.m. to Monday at 6:30 a.m. The Security Contractor shall have site coverage for Legal Holidays and shall coordinate those days and times with the District to ensure continuous site security.

B. BASIC SERVICES

The Security Contractor agrees to provide the Services described below:

1. The Security Contractor shall be fully responsible for the direct supervision of its own employees by its own supervisory and management personnel. An "Account Manager" shall be appointed and assigned to provide overall contract management and to provide the primary point of contact between the District and the Security Contractor. The Account Manager must have the responsibility and authority to fully represent the Security Contractor on all matter pertaining to the Contract.
2. The Account Manager shall be on-call at all times for emergencies and must be able to respond immediately and/or call immediately. The Account Manager shall make himself/herself available to the District to discuss performance of the services or other provisions of the Contract at any time.
3. The Security Contractor shall provide an adequate number of trained, qualified personnel capable of performing the services in accordance with the Contract. The Security Contractor shall provide an Account Manager and an appropriate number of Security Supervisors and Uniformed Security Officers.
4. The Security Contractor shall install and maintain an electronic security guard checkpoint system as part of the roving patrol scope. A minimum of four (4) checkpoints shall be installed at locations as directed by the District. Roving patrols are to occur hourly and make proof of presence checks. Submit weekly reports to the District or immediately after an incident.
5. **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 Security Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Security Contractor'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. CONTRACTOR REPRESENTATIVES

1. ACCOUNT MANAGER:

The Account Manager's responsibilities include, but not limited to:

- a. Act on behalf of the Security Contractor on all matters related to the Contract.
- b. Development of operational procedures and security post orders which are consistent with the District's fire alarm and intrusion alarm procedures.
- c. Development and administration of a training program and updating that program on a regular basis to address specific Project site conditions.
- d. Report to and coordinate with the District Representative on a regular basis.
- e. Maintain an adequate quality control and complaint resolution system.
- f. Respond to Contract discrepancy reports on an as-needed basis.
- g. Ensure compliance with contractual staffing, training and equipment requirements.
- h. Be knowledgeable and adhere to Security Contractor's standards regarding safety and ensure compliance of subordinates through regular inspections.

2. SECURITY SUPERVISORS:

The Security Supervisors' responsibilities include, but not limited to:

- a. Respond to on-site incidents involving subordinates or respond to requests from the District Representative within one (1) hour following an occurrence or request.
- b. Conduct on-site supervision, inspection and guidance to on-duty Security Officers.
- c. Assure proper assignment and relief coverage. Notify the District Representative of uncovered posts immediately.
- d. Reviews, corrects and approves subordinates' logs and reports.
- e. Maintains knowledge of District operational areas, facilities and property as well as adjoining areas.
- f. Ensures subordinates' compliance to all terms of the Contract, post orders and District policy, rules and regulations.
- g. Provide written results of investigations at the request of the District Representative.

3. UNIFORMED SECURITY OFFICERS

The Uniformed Security Officers' responsibilities include, but not limited to:

- a. The primary responsibilities of Security Officers are to provide visual presence of a professional uniformed security force to deter crime and threats to the project site including equipment, parking lot and facilities, etc.
- b. The Security Officer must also provide for public safety by requesting that all individuals that are not authorized contractors vacate the premises in prompt and orderly manner.

- c. Prepare accurate, legible and grammatical reports detailing any unusual incidents/accidents or occurrences during each shift.

The Security Officers' Eligibility Criteria:

- d. All security personnel employed by the Security Contractor under the resulting Contract are required to meet certain minimum qualifications or standards regarding background, training, experience, and health as established in this section unless a waiver is requested and approved prior to submission of a proposal. The final decision as to the suitability of security personnel rests with the District.
- e. All Security Officer Candidates must be at least 18 years of age as documented by an original or photocopy document.
- f. Must be a graduate of a state certified Security Officer/guard training program and possess current, valid Consumer Affairs guard cards.
- g. Must be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by an Alien Registration Receipt Card for 1-151, or other evidence from the Immigrations and Naturalization Service that the candidate is able to work legally in the United States.
- h. The Security Contractor shall conduct state mandated "livescan" and BSIS criminal record checks of all Security Officers assigned to the Contract.
- i. Security Officers may not be employed under the Contract if he or she currently, or in the past, has been involved in:
 - 1. Any felony or sex conviction;
 - 2. Military conduct resulting in dishonorable or undesirable discharge; or
 - 3. Any pattern of irresponsible behavior or moral turpitude, including, but not limited to reckless driving, drunk driving, theft, illegal drug use, etc.
- j. All Security Officers shall be demonstrably free from addition to, or use of, illicit drugs, as determined by a NIDA-certified urinalysis drug screen (UDS) reviewed by a Medical Review Officer. Proof of a negative drug screen within the last 30 days is required prior to the assignment to the Project.
- k. Must be fully literate in the English language (i.e. be able to read, write, speak, and understand clearly). All personnel shall be capable of properly writing reports and maintaining a daily activity log. Oral command of English must be sufficient to permit full and effective communication even in times of stress.
- l. Must acquire, keep active and possess at all times while on duty all technical licenses and permits required by law for employment as a Security Officer; and
- m. Must meet the following requirements regarding professional behavior and ability:
 - 1. Ability to meet and deal tactfully with police and fire department personnel, District employees and the general public; ability to understand, explain, interpret, and apply rules, regulations, directives and procedures in a tactful manner;
 - 2. Possess poise, self-confidence and an ability to make sound decisions and react quickly under stressful situations;
 - 3. Ability to prepare clear and concise reports;
 - 4. Ability to learn and adapt to changing situations; and
 - 5. Ability to accept and respond to instruction and direction from supervisors.

D. REQUIRED DOCUMENTATION

All personnel performing under the Contract must possess and keep current as required all appropriate cards, certificates and licenses, including but not limited to the following:

1. California Department of Consumer Affairs Guard Card.
2. Valid California Driver's License (if operating a motor vehicle).
3. Items 1 and 2 must be on Security Officer's person at all times while on duty.

E. POST ORDERS

The Security Contractor shall provide "post orders" to guide the performance of its security personnel on the Project. These post orders shall be prepared in consultation with the District and shall be subject to regular review and/or inspection.

Post orders define the basic work to be performed by Contract security personnel at the Project. Post orders are prepared by the Security Contractor's Account Manager in consultation with the District. Post orders shall include but not limited to:

1. Emergency Procedures and Notification List;
2. Access Control Procedure;
3. Patrol Procedures;
4. Maps and Diagrams, as required;
5. Ingress and Egress Procedures;
6. Parking Enforcement;
7. Inspection;
8. Coordination with the District's Buildings and Grounds fire alarm and intrusion alarm personnel for ongoing operations in existing buildings.
9. Policy on City of Oakland Police and Fire Department notifications.

F. TRAINING REQUIREMENTS

The Security Contractor is required to ensure that all field personnel receive training in order that the District is assured that said personnel are capable of assuming the responsibilities of their assignments. The Security Contractor shall include in their Proposal a description of a developed employee training plan that incorporates the above requirements.

G. EQUIPMENT FOR SECURITY SERVICE

The Security Contractor is required to provide all personnel with the equipment necessary to perform the requirements of the Contract. Minimum uniform equipment shall include:

1. Handcuffs (Smith & Wesson or Peerless);
2. Cellular telephone;
3. Sam Browne equipment belt or approved equal;
4. Flashlight;
5. CPR pocket mask; and
6. Visible name tag.

Uniform equipment and badges/patches shall not be similar in style or appearance to those worn by any law enforcement agency that operates in the service area where the security personnel or security supervisor is assigned.

H. PROHIBITED EQUIPMENT

Security personnel shall not be permitted to carry or possess any unauthorized equipment such as firearms, knives, batons, Tasers, chemical agents, concealed weapons, personal

radios, televisions, computer games or any other items not specifically approved in the Contract.

I. VEHICLE

Security personnel are required to have a response vehicle accessible at all times. All vehicle costs and the vehicle themselves shall be provided by the Security Contractor.

Also, all Contract response vehicles shall be equipped with the following equipment:

1. Heavy duty/rechargeable flashlight;
2. First aid kit;
3. Blanket;
4. Fire Extinguisher; and
5. Two-way Radio (optional).

Security Officers shall possess driving records reflecting reasonable care and judgment. The benchmark for failure to meet this standard shall be: Three moving violations within the past three years; or any upheld suspension or revocation of license within the past three years; or any conviction for driving under the influence of intoxicants (DUI) without a time limit.

J. REPORTS AND RECORDS

The Security Contractor shall provide thorough and accurate recording and reporting of all security services operations, activities and incidents. The Security Contractor shall develop and implement, with District approval, a complete paperwork management program to include adequate and appropriate reports and records. The Security Contractor shall describe the forms, records and reports proposed and utilized for the contract.

The Security Contractor should include an example of each in the Proposal.

K. STAFFING RESTRICTIONS

The District has the right to request removal of a Contract employee from the property at any time and for any non-discriminatory reason. The Security Contractor shall immediately comply, and shall not reassign that employee to property under any circumstances.

If the Security Contractor removes a Security Officer from property without prior notice, due to unacceptable job performance, the District is to be advised of the full particulars on the next normal business day. If this occurs during normal business hours, the District is to be advised immediately.

No Contract Security Services employee shall be assigned to work more than 12 hours in a 24-hour period. Every shift of eight hours or more must be preceded and followed by an off-period of at least eight hours.

L. 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.

M. 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 contractor 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.

N. 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 specific security services.
- 1.2.** The District seeks to identify companies with a record of excellence in efficient planning and performance.
- 1.3.** The Statement of Qualifications must contain all requested information about the company 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 company.

2. Content – Statement of Qualifications

- 2.1. Letter of Interest** - A dated Letter of Interest must be submitted, including the legal name of the company(s), address, telephone, email address and fax numbers, and the name, title, and signature of the person(s) authorized to

submit the Statement of Qualifications on behalf of the company. The Letter of Interest should provide a brief statement of company's experience indicating the unique background and qualities of the company, its personnel, and its sub-Contractors, and what will make the company 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 company's approach, along with a brief summary of company's qualifications.
- 2.4. Company Information** - Provide a comprehensive narrative of the services offered by company. The narrative should include all of the following:
 - 2.4.1.** Provide a brief history of company, team companys, and, if a joint venture, of each participating company. 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 company's philosophy and how it will work with District administration officials, community partners and district facilities staff.
 - 2.4.3.** Discuss the company's/team's ability to meet schedules for comparable contracts, company's schedule management procedures, and how the company has successfully handled emergency and/or unexpected situations.
 - 2.4.4.** Identify school districts and public agencies serviced by company in the past three (3) years. Limit response to no more than the twenty (20) most recent contracts. Please include the following information for each contract
 - 2.4.4.1.** Name of contract and client,
 - 2.4.4.2.** Scope of contracts, description of services provided,
 - 2.4.4.3.** Contact person, telephone number and email address,
 - 2.4.4.4.** Company person in charge of each contract,
 - 2.4.4.5.** Dollar value of each contract and service duration.
- 2.5. Litigation** - Disclose all litigation arising from the contract, if any, in the past five years. State the issues in the litigation, the status of litigation, names of parties, and outcome.

2.6 Additional Data - Provide additional information about the company 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 company's qualifications, capacity and/or expertise. This additional data shall be in an Appendix and will not be counted in the 15-page SOQ limit.

2.7 Professional Fees

Provide a detailed schedule of the Security Contractor's hourly billing rates and a breakdown of associated costs for all tasks proposed (including contingency costs per task).

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

The Local Business Utilization Policy 7115 requires that there is a mandatory fifty percent (50%) LBU participation with a 25% or less Local Business (LBE) participation and a 25% or more Small Local or Small Local Resident Business (SLBE/SLRBE) participation. Submit a detailed description of the team's L/SL/SLRBE composition clearly indicating the name of the companies and percentages of participation on the following form ("Local Business Participation Worksheet").

District Modification for this RFQ/P only: Based on the availability analysis conducted to create the pre-qualified pool of Project Inspectors, the District had waived the entire 25% SLBE/SLRBE requirement. The minimum local business utilization requirement of 50% is still applicable for this RFQ/P and can be met with a 50% LBE participation.

LOCAL BUSINESS PARTICIPATION WORKSHEET

Prime Consultant:

RFQ/P: Various School Sites under Construction

Date:

Team Member	Projected Percent of Total Fee Per Team Member	LBE %	SLBE %	SLRBE %	City of Oakland or other OUSD approved agency; Certification Number and Expiration Date
Prime Company: Address: Phone: Email:					
Company: Address: Phone: Email:					
Company: Address: Phone: Email:					
Company: Address: Phone: Email:					
Company: Address: Phone: Email:					
Company: Address: Phone: Email:					
TOTAL PARTICIPATION					

Approval – LBU Compliance Officer

O. 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 business, and the company's ability to integrate its personnel with the District's staff and contractors.
2. After the submittals are evaluated and/or ranked, the District, at its sole discretion, may elect to interview the top company(s). The District may elect to interview one or more companies. Interviews are tentatively scheduled as indicated above. Any company(s) selected for interviews must make available for interview the key personnel it intends to assign to the District's Project. 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 company that extend beyond the information in the proposals. The District may conduct interviews of companies.

P. 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 company for the services described herein. The District reserves the right to seek proposals from or to contract with any company not participating in this process. The District reserves the right to reject any or all submissions, to request further information, to negotiate with any company, 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 company 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 company 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 company 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 company 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 contingency 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. Contractor acknowledges that the not-to-exceed amount for Basic Services, above, includes contingency compensation in the event that more time and costs than originally anticipated may be necessary to complete the Basic Services. 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

Scope of Basic Services

Exhibit B

Hourly Rates