

**REQUEST FOR QUALIFICATIONS AND PROPOSAL
PROGRAM MANAGEMENT SERVICES
RFQ/P # 2022-PM**

OVERVIEW AND SUBMISSION GUIDELINES

The Culver City Unified School District ("District") is requesting qualified persons, firms, partnerships, corporations, associations, or professional organizations to provide comprehensive and professional program management services to the District for new construction, expansion, modernization, and/or renovation projects relating to the District's facilities development of its public schools. ("Project(s)").

SUBMITTALS:

Each Statement of Qualifications ("SOQ") submitted in response to this Request for Qualifications/Proposal ("RFQ/P") must conform and be responsive to the requirements set forth herein.

Respondents should mail or deliver Three (3) bound copies, and One (1) unbound copy of their SOQ to the address below.

Respondents should also send by electronic mail a copy of their SOQ to **Robert Quinn, Assistant Superintendent, Business Services, robertquinn@ccusd.org**.

**ADDRESSED TO: ROBERT QUINN
ASSISTANT SUPERINTENDENT, BUSINESS SERVICES**

**MAILING ADDRESS: Culver City Unified School District
4034 Irving Place
Culver City, CA 90232**

**SOQ/P SUBMITTAL: Mark envelope:
"Statement of Qualifications for Program Management"**

**RESPONSES ARE DUE BY 2:00 P.M., ON Monday, December 5,
2022.
FAX RESPONSES WILL NOT BE ACCEPTED.**

**QUESTIONS: Must be submitted in writing to Robert Quinn, Assistant
Superintendent, Business Services,
robertquinn@ccusd.org, on or before Friday, November
18, 2022 at 4:00 PM.**

I. INTRODUCTION

The Culver City Unified School ("District") is a public K-12 school district located in the City of Culver City, in Los Angeles County, California.

The District is seeking Statements of Qualifications ("SOQ") in response to this Request for Qualifications/Proposals ("RFQ/P") from experienced entities to provide comprehensive and professional program management services for new construction, expansion, modernization, and/or renovation projects at any of the District's schools. ("Project(s)").

Please note that the Program Manager that is selected by the District via this RFQ/P process shall not be eligible to perform as a construction manager for individual construction projects that will be part of the Program.

A. LIMITATIONS

The District reserves the right to contract with any entity responding to this RFQ/P. 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 a response to this RFQ/P. The awarding of a services contract(s), if at all, is at the sole discretion of the District. The District reserves the right to cancel this RFQ/P at any time.

The District reserves the right to reject any or all SOQs, to waive any irregularities or informalities not affected by law, to evaluate each SOQ submitted, and to award a contract, if any, according to the SOQ which best serves the interest of the District at a reasonable cost to the District. Further, the District reserves the right to reject any and all SOQs and to negotiate contract terms with one or more respondent firms for one or more of the work items.

The Respondent's SOQ package, 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.

Please note that the District is not looking for construction management services as part of this RFQ/P. The District seeks a firm which can dedicate the financial and professional resources necessary to provide Program management services. The District, will through a separate RFQ, seek additional services for construction management. As noted above, the District shall limit any responder to one role (i.e. architect or program manager or construction manager) and the Program Manager shall not be eligible to perform as a construction manager for projects in the Program.

B. FULL OPPORTUNITY

The District hereby affirmatively ensures that Disadvantaged Business Enterprises (“DBE”), Small Local Business Enterprises (“SLBE”), Small Emerging Local Business Enterprises (“SELBE”), Disabled Veterans Business Enterprises (“DVBE”), and minority business enterprises shall be afforded full opportunity to submit SOQs in response to this RFQ/P and will not be discriminated against on the basis of race, color, gender, sexual orientation, political affiliation, age, ancestry, religion, marital status, national origin, medical condition or disability in any consideration leading to the award of the contract. No qualified disabled person shall, on the basis of disability, be excluded from participating in, be denied the benefits of, or otherwise be subjected to discrimination in any consideration leading to the award of contract.

C. 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 responding 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(s) with any member of the District’s Governing Board (“Board”), selection committee members, or with any employee of the District except for clarifications and questions as described herein. Any such contact shall be grounds for the disqualification of the program management services entity submitting a SOQ.

D. TERM OF CONTRACT

The initial term of the contract will be for three (3) years with additional one-year options to renew, should the District, at its sole discretion, offer the option to renew. The contract will be subject to termination as stipulated in the form of professional services agreement distributed with this RFQ/P (“Agreement”).

II. SCOPE OF REQUIRED SERVICES

Although the full scope of work shall be negotiated in the Agreement, the Program Manager will be expected to be capable of fulfilling, at a minimum, the following:

A. PROGRAM OVERSIGHT

1. In consultation with the District and District’s consulting team, to develop, plan, coordinate, organize, and manage the Program, including the identification and administration of all tasks related to the planning, development, design, and completion of every project to ensure all public funds are maximized and all projects are completed within the allocated scope, budget, and schedule.
2. Develop and maintain a master schedule to manage all project related activities and ensure that the projects will be completed as scheduled.

3. Develop and maintain a master budget that allows for project and program budgets and accounting.
4. Assist with development of Program Design Standards. Develop a policy and procedure manual for Program implementation. Develop procedures to seek out cost efficiencies and eliminate duplication in efforts and costs.
5. Assist in administration of a financial management system compatible with the District's accounting system which would facilitate accounting of Program funds, auditing of expenditures, Program and project estimates and budgets, contract payments, a cash management system, and periodic financial reporting.
6. Assist the District in the monitoring of Architect/Engineer and Construction Management contracts.
7. Assist with the design, marketing and implementation of a contractor outreach program to maximize the pool of qualified contractors and subcontractors for District projects. Assist with the prequalification process.

B. PROGRAM REPORTING

1. In consultation with the District, coordinate internal and external communication, including, but not limited to, conducting public hearings, planning and conducting media events, issuing press releases, publishing newsletters, and contributing to the District website.
2. Prepare and present status reports to the District, and Board of Trustees as applicable.

C. PROJECT SUPPORT

1. Assist in the preparation and administration of requests for proposal, requests for qualifications, front-end documents and general conditions related to the bidding process and the implementation of a prequalification process as elected by the District.
2. Organize and maintain all records, correspondences, contracts, research analyses and other documents related to design, bidding, and construction. Such documents are subject to annual external performance and financial audits.
3. Develop a management information system ("MIS"), including, but not limited to, assembly of an as-built data base, establishment of procedures to organize existing files and provide such files in an electronic form, creation of master plans with DSA application numbers shown, assistance in closing outstanding DSA files, and creation of an interactive website that contains current photos and public reports of each project.
4. Oversee the establishment of commissioning goals and monitor the project

commissioning process.

5. Oversee, coordinate, and document regulatory compliance, including but not limited to local, state and federal permits and environmental compliance. Oversee project constructability reviews.
6. Oversee review of project cost estimates and budget reconciliation at each project phase.
7. Assist in administration of the competitively bid construction process.
8. Oversee Contract close-out and Project close-out activities.

III. STATEMENT OF QUALIFICATIONS

A. SUMMARY OF REQUIRED QUALIFICATIONS

The Scope of Services includes program management services for the relevant Project(s). Extensive experience with the Office of Public School Construction ("OPSC"), the Division of State Architect ("DSA"), and Title 24 of the California Code of Regulations is **mandatory**.

B. FORMAT REQUIREMENTS

Firms submitting SOQs in response to this RFQ/P must follow the format below. Material must be in 8-1/2 x 11 inch format. Each SOQ shall include a Front Cover stating the following: "Statement of Qualifications for [FIRM NAME] in Response to Culver City Unified School District's RFQ/P # 2022-PM."

Each SOQ shall include a table of contents and divider tabs labeled with the boldface headers below (e.g. the first tab would be entitled "Cover Letter," the second tab would be entitled "Business Information," etc.) **Total submittal length shall not exceed 50 pages of content, divider pages excluded.**

Provide Three (3) bound copies, One (1) unbound copy, and One (1) electronic copy of the Statement of Qualifications.

The unbound copy shall be marked "Copy for Reproduction", and shall be formatted as follows:

- No divider sheets or tab.
- Text printed on one side only (i.e. no back to back pages).
- Pages with proprietary information removed.
- A cover sheet listing the firm's name, the total number of pages, and identifying those pages that were removed due to proprietary information.

The electronic copy will only be accepted via email only in the following programs: Microsoft Office Suite and PDF.

Each submission package will be reviewed to determine its completeness prior to the actual evaluation. If a respondent does not respond to all categories requested, the respondent

may be disqualified from further consideration.

C. SOQ CONTENT REQUIREMENTS

Each proposal shall include a description of the type, technical experience, background, qualifications and expertise of the Respondent's firm. The description shall show that the firm possesses the demonstrated skills and professional experience to perform the general functions of the Program and fulfill the goals and vision of the District. Proposals shall demonstrate the Respondent's ability to develop and implement a creative approach to program management for the District.

1. TAB 1 - COVER LETTER (maximum of 2 pages)

- Provide a letter of introduction signed by an authorized officer of the program management services company. If the program management services company is a joint venture, duplicate the signature block and have a principal or officer also sign on behalf of each party to the joint venture.
- Include a brief description of why your firm is well suited for, and can meet, the District's needs.
- Clearly identify the individual(s) who are authorized to speak for the firm during the evaluation process.

- **Must include the following statement:**

"[INSERT COMPANY'S NAME] received a copy of the District's form of Professional Services Agreement ("Agreement") attached as Appendix "A" to the RFQ/P. [INSERT COMPANY'S NAME] has reviewed the indemnity provisions and professional liability insurance provisions contained in the Agreement. If given the opportunity to contract with the District, [INSERT COMPANY'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.
- Respondent shall certify that no official or employee of the program management services company has ever been convicted of an ethics violation.

2. TAB 2 – BUSINESS INFORMATION

Please provide the following information:

- Company name.

- Address.
- Telephone.
- Fax.
- Website.
- Name and email of main contact.
- Federal Tax I.D. Number.
- License or Registration Number.
- Type of organization/business structure (ownership, legal form, i.e. corporation, partnership, etc., and senior officials of company). If a joint venture, describe the division of responsibilities between participating companies, offices (location) that would be the primary participants, and percentage interest of each firm.
- A brief description and history of the firm, including number of years the firm has been in business and date firm was established under its given name.
- Number of employees (licensed professionals, technical support.)
- Location of office where the bulk of services solicited will be performed. Respondents must have an office within 100 miles of the Culver City Unified School District Administrative Offices.
- Any State of California certification for your firm of Small Business or Disabled Veteran Business Enterprise status.

3. TAB 3 – EXECUTIVE SUMMARY: APPROACH AND FIRM QUALIFICATIONS

- Outline your general management approach, including:
 - Provide a statement demonstrating your firm’s or team’s ability to accomplish the scope of services in a comprehensive and thorough manner with an aggressive schedule in order to meet the District’s goal of moving projects into construction within the earliest possible timeframe.
 - Describe your firm’s approach to cost estimating, including some history of cost estimates versus actual bid amount, on three (3) school projects awarded in the last five (5) years. Include at least two (2) examples of school facility modernization projects.
 - Describe your firm’s approach to quality control/assurance procedures, including coordination of DSA final certification.

- Describe the approach to compliance with Program requirements and conformance with Federal/State/Local applicable code requirements.
- How does your firm approach modernization projects versus new construction projects?
- Include a brief summary of your firm's qualifications, including:
 - Describe your firm's experience with construction cost reduction measures such as, but not limited to, value engineering in design and construction.
 - Describe your firm's experience with lease/lease-back projects.
 - Describe your firm's experience with project commissioning.
 - Demonstrate your firm's flexibility in adapting to the changing needs and priorities of a K-12 school district.
 - Describe your experience with DSA and working within the DSA processes.
 - Identify established methods and approaches utilized by your firm to successfully meet completion deadlines, and provide examples demonstrating effective use of stated methods and approaches.

4. TAB 4 – NARRATIVE OF RELEVANT K-12 PROJECT EXPERIENCE AND REFERENCES

Provide a Comprehensive Narrative of the program management services offered by your firm in the last five (5) years on at least three (3) K-12 educational programs. The narrative should include the following:

- **Experience:** Describe your experience with public educational projects. Include for each project:
 - Project name, type, program, and location.
 - Scope of project.
 - Description of project.
 - Construction costs, including original budget, bid amount and final amount at close-out.
 - Describe your experience with DSA and OPSC.
 - Detail your experience with the various types of construction delivery systems.
 - Beginning and end dates of project.
 - Square footage.

- Date of each project Notice of Completion and DSA final certification.
 - Number of RFI's and Change Orders of each project.
 - Key individuals of the firm involved and their roles in the project.
 - Any sub-consultants that worked with the firm.
 - Provide references, including: district name with name and of contact person, title, telephone number, and email address to be contacted for a reference.
- **Staffing Resources and Key Personnel:**
 - Provide total number of professional staff employed by the firm.
 - Identify persons who will be principally responsible for working with the District. Indicate the role and responsibility of each individual, and how many years they have been with the company. One or more of these individuals will be expected to maintain a working office on District premises.
 - Provide brief resumes of individuals that will be working directly with the District. Specifically define the role of each person and outline his or her individual experience and responsibilities. Indicate who would serve as the primary contact for the District. If the firm would utilize resources from more than one office, indicate office locations and how work would be coordinated. The District expects that the team shall remain intact through the duration of the Program. If a team member must leave, the District reserves the right to approve
 - **Change Order Data:** Provide Change Order data from your five (5) most recent public works projects upon which you served as Program Manager/Construction Manager. Include original estimates of project costs and a brief explanation of the deviations and change orders.
 - **Enforcing Contractor Performance and Limiting Claims:** Provide a detailed explanation of how your firm ensures contractors' timely performance and how your firm limits contractors' claims.
 - **Properly Licensed:** Each SOQ must include evidence that the program management services company is legally permitted and properly licensed for the scope of work for which the SOQ is submitted and to conduct business in the State of California.
 - **Additional Data:** Provide additional information about the firm as it may relate to this RFQ/P, including information about, and

the significance of, any other projects not identified above but which you feel are relevant to the Project(s). 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 evaluation teams in understanding your qualifications and expertise.

5. TAB 5 – LITIGATION HISTORY

Provide a comprehensive five (5)-year summary of the firm's litigation, arbitration and negotiated/settled history with previous clients. State the issues in the litigation, the status of the litigation, names of parties, and outcome. A SOQ failing to provide the requested information on lawsuits or litigation, and responses which assert attorney-client privilege and fail to provide the information requested, will be considered non-responsive, disqualified from the selection process, and will not be evaluated.

6. FEE PROPOSAL

Respondents must submit a fee proposal in a **separate, sealed envelope**. The fee proposal shall include hourly rates for anticipated positions within the PM organization structure. The fee proposal should also include an estimate of personnel hours and cost to complete the scope of work. A form of the Agreement has been distributed with this RFQ/P. The final form of the Agreement will incorporate the final scope of work and not-to-exceed fee negotiated between the District and selected firm as Exhibit D. Any proposed changes to the form of Agreement will have to be identified prior to the interview phase as will be indicated by the District as changes will not be entertained after the selection process is complete.

IV. SELECTION CRITERIA

A. EVALUATION

The SOQ will be reviewed for responsiveness and evaluated pursuant to the specific criteria set forth in this RFQ/P, including, without limitation:

- The company's experience and performance history with similar projects for California K-12 school districts, including:
 - Successful experience with DSA, modernization and new construction projects, and completion of projects on time, including demonstrated ability to complete Project(s) in a tight time-frame.
 - Change Order experience.
 - Knowledge of applicable state laws and regulations, and other governmental requirements for K-12 school districts.
- Experience, results, and professional and technical expertise of proposed personnel.
- Acceptable and verifiable references from clients contacted by the District, including:
 - Firm's reputation;

- Satisfaction of previous clients (client relationships);
- Timeliness of work and ability of the firm to meet schedules; and
- Accuracy of cost estimates.
- Overall responsiveness of the SOQ.
- Location of office and accessibility to the Project(s).
- Fee requirements and cost of services.

A Selection Committee will evaluate all submissions. Each SOQ must be complete. Incomplete SOQs will be considered nonresponsive and grounds for disqualification. The District retains the sole discretion to determine issues of compliance and to determine whether a company is responsive, responsible, and qualified. Based upon the information presented in the SOQs, the District's Selection Committee will choose the most highly qualified firms to participate in the interview process.

B. DISTRICT INVESTIGATIONS

The District may perform investigations of responding parties that extend beyond contacting the references identified in the SOQ. The District may request a company to submit additional information pertinent to the review process. The District also reserves the right to investigate and rely upon information from other available sources in addition to any documents or information submitted.

V. RFQ/P RESPONSE SCHEDULE SUMMARY:

The District reserves the right to change the dates on the schedule without prior notice.

DATE	EVENT
November 3, 2022	Release of RFQ/P # 2022-PM.
November 18, 2022; 4:00 PM	Deadline for submission of written questions.
December 5, 2022; 2:00 PM	Deadline for submitting SOQ/Proposals.
December 16, 2022	Interviews of qualified, short-listed firms.

WE THANK YOU FOR YOUR INTEREST IN THIS PROJECT!

AGREEMENT FOR PROGRAM MANAGEMENT SERVICES

CULVER CITY UNIFIED SCHOOL DISTRICT

WITH

(Date)

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AGREEMENT FOR PROGRAM MANAGEMENT SERVICES

This Agreement for Program Management Services ("Agreement") is made as of _____, 2022, between the Culver City Unified School District, a California public school district ("District"), and _____ ("PM") (both collectively "Parties"), for District's Facilities Construction Program ("Program") as follows:

The administration of the Program, including oversight and coordination of the projects comprising the Program management of projects that comprise the Program. PM will perform Program Management Services for the Program.

PM shall render services and furnish the work as described herein, including acting as District's agent for the Program, commencing upon execution of the Agreement and provision of the required insurance certificates and endorsements.

The Program may include multiple components. Any one of the components or combination thereof may be changed, including terminated, as indicated herein, without changing in any way the remaining component(s) or this Agreement. The provisions of this Agreement shall apply to each component without regard to the status of the remaining component(s). PM shall invoice for each component separately and District shall compensate PM for each component separately on a proportionate basis based on the level and scope of work completed for each component.

For and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

ARTICLE 1. Definitions

- 1.1 In addition to the definitions above, the following definitions for words or phrases shall apply when used in this Agreement, including all Exhibits:
 - 1.1.1 **Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
 - 1.1.2 **Architect:** The architect(s) that District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s).
 - 1.1.3 **As-Built Drawings ("As-Built's"):** Any document prepared and submitted by District Contractor that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by Construction Change Documents and change orders, and detailed by District's construction Contractor on a Conforming Set.
 - 1.1.4 **Board:** District's Governing Board.
 - 1.1.5 **Conforming Set:** The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase.

- 1.1.6 **Construction Budget:** The total amount indicated by District for the Project plus all other costs, including design, construction, administration, financing, and all other costs.
- 1.1.7 **Construction Change Documents ("CCD"):** The documentation of changes to the DSA-approved construction documents.
- 1.1.8 **Construction Cost Budget:** The total cost to District of all elements of a Project designed or specified by the Architect, as adjusted during and at the end of the design phase in accordance with this Agreement and the Agreement for Architectural Services. The Construction Cost Budget does not include the compensation of the Project Design Team, PM and any subconsultants, the cost of the land, rights-of-way, or financing which are the responsibility of District.
- 1.1.9 **Construction Manager:** May refer to third party providing construction management services to District.
- 1.1.10 **Consultant(s):** Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to PM.
- 1.1.11 **Contractor:** One or more licensed and registered contractors under contract with District for construction of all or a portion of the Project.
- 1.1.12 **Design Team:** The Architect(s) that District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s), plus all engineer(s) or other designer(s), who have a responsibility to District to design all or a portion of the Project either directly or as a subconsultant or subcontractor. The term Design Team includes the Design Professional in General Responsible Charge on this Project.
- 1.1.13 **DIR:** California Department of Industrial Relations.
- 1.1.14 **District:** The Culver City Unified School District.
- 1.1.15 **District's Representative:** The individual identified herein that is authorized to act on District's behalf with respect to the Project. The initial District's Representative shall be Mike Reynolds, Assistant Superintendent, Business Services. District may change District's Representative by notice as set forth herein.
- 1.1.16 **DSA:** Division of the State Architect in the California Department of General Services.

- 1.1.17 **Extra Services:** District-authorized Services outside of the scope in **Exhibit A** or District-authorized reimbursables not included in PM's fee.
- 1.1.18 **Fee:** PM's Fee is defined in Article 7 and payable as set forth in **Exhibit D**.
- 1.1.19 **Program:** District's Facilities Construction Program.
- 1.1.20 **Program Budget:** The total amount available for all costs related to the Program including, but not limited to, Program design, Program administration, Program financing, the services pursuant to this Agreement, and the construction of the Program. The Program Budget is the sum of all the Construction Budgets for each Project and all other Program expenses. The Program Budget is derived from the funds designated by District for the Program, and PM shall ensure that no additional funds are necessary for the Program. The Board may, at its sole discretion, determine to expand the Program Budget based on receipt of additional funding.
- 1.1.21 **PM:** The entity listed in the first paragraph of this Agreement, including all Consultant(s) to PM.
- 1.1.22 **Project(s):** The projects identified in District's Program.
- 1.1.23 **Project Inspector, Inspector of Record, IOR:** The agent of the DSA at the project site whose primary responsibility will be to insure that the project is constructed in compliance with current codes; DSA-approved plans and specifications relating to fire life safety, structure, and accessibility; and quality controls required of a public works facility. The IOR will report to both the DSA and the Architect.
- 1.1.24 **Record Drawings:** A final set of drawings prepared by the Architect incorporating all changes from all As-Builts, sketches, details, and clarifications.
- 1.1.25 **Service(s):** All labor, materials, supervision, services, tasks, and work that PM is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of each Project and the management and coordination of the Program.

ARTICLE 2. Term

- 2.1 **Term:** This Agreement shall become effective on _____, 2022, and, except as otherwise provided herein, will continue in effect until _____, 20__.

- 2.2 **Option to Renegotiate:** During the term of this Agreement, District shall have the option to renegotiate PM's staffing, scope and fee, on an annual basis. The first option to renegotiate vests on or about _____, 20__.

ARTICLE 3. Scope, Responsibilities and Services of PM

- 3.1 **Scope:** PM shall provide the Services described herein and under **Exhibit A** for the Project.
- 3.2 **Standard of Care:** PM, its officers, agents, employees, subcontractors, Consultants and any persons or entities for whom PM is responsible, shall provide all Services pursuant to this Agreement in accordance with the requirements of this Agreement and in a manner consistent with the standard of care under California law applicable to those who specialize in providing the same services for projects of the type, scope, and complexity of the Project. District's review, approval of, or payment for any of the Services required under this Agreement shall not be construed as assent that PM has complied, nor in any way relieve PM of compliance, with (i) the applicable standard of care, or (ii) applicable statutes, regulations, rules, guidelines and requirements.
- 3.3 **Coordination:** In the performance of PM's services under this Agreement, PM agrees that it will maintain coordination with District-designated representatives as may be requested and desirable. This shall include, without limitation, coordination with all members of District's Design Team, the Project Inspector, and the third party Construction Manager(s), if any.
- 3.4 **Other Consultants:** If PM employs sub-consultant(s), PM shall ensure that its contract(s) with its sub-consultant(s) include language incorporating the terms of this Agreement.
- 3.5 **PM's as District Representative:** PM will act as District's agent to render the Services and furnish the work as described in **Exhibit A**, commencing with the receipt of a written Notice to Proceed signed by District Representative. PM's services will be completed in accordance with the schedule attached as **Exhibit C**. During the Project's Construction Phase, District may require that the Contractors submit all notices and communication relating to the Project directly to PM.
- 3.6 **Review of Long Range Facilities Plan:** PM shall review the Long Range Facilities Plan ("LRFP") for the District and other written materials made available by the District to PM to fully understand the nature, extent and intent of the LRFP and the Projects.
- 3.7 **[RESERVED]**
- 3.8 **Conflicts of Interest Prohibited:**
- 3.8.1 PM understands that District officials and employees are prohibited from involvement in decisions in which they

may have a financial interest pursuant to Government Code sections 1090 and 87100 et seq., and certifies that it does not know of any facts indicating that any District official or employee has an ownership or other financial interest, direct or indirect, in this Agreement. Further, PM hereby certifies that no current District official or employee of District, and no one who has been a District official or employee of District within the past two years has participated in bidding, selling or promoting this Agreement. PM understands that in addition to the remedies available at law, that any failure to provide an accurate certification or any violation of this provision shall make the Agreement voidable by District.

- 3.8.2 If involved in the preparation of request for proposals or selection thereof, PM shall not be permitted to submit proposals or otherwise seek contracts for the following services to be procured by District in connection with any project covered by this Agreement: Design Professional, Construction Manager, IOR or Test/Inspection. If PM identifies potential Design Professional, Construction Manager, Project Inspector or Test/Inspection services in connection with a project, PM shall affirmatively and unequivocally represent and warrant to District that neither PM nor any person who holds equity interest in PM's organization is a former or current holder of any equity interest in the firm identified or has any financial interest in the firm identified. District reserves the sole discretion to waive this subsection's requirements on a case-by-case basis.

ARTICLE 4. PM Staff

- 4.1 District selected PM to perform the Services because of PM's skills and expertise of key personnel.
- 4.2 PM agrees that the following key personnel in PM's firm shall be associated with the Program and perform the Services in the following capacities:
 - Principal In Charge: _____
 - Project Director: _____
 - Project Manager: _____
 - Other: _____
 - Other: _____
 - Other: _____
- 4.3 PM shall not change any of the key personnel listed above without District's prior written approval, unless said personnel cease to be

employed by PM. Regardless of the reason for the change in key personnel, District shall be allowed to interview and retains the right to approve replacement personnel.

4.4 If any designated lead or key person fails to perform to the satisfaction of District, then upon District's written notice, PM will have seven (7) calendar days to remove that person from the Project and shall provide a replacement person acceptable to District.

4.4.1 All lead or key personnel for any Consultant must also be designated by the Consultant and are subject to all conditions stated in this Agreement.

4.5 PM represents that it has no existing interest and will not acquire any interest, direct or indirect, that could conflict in any manner or degree with the performance of Services required under this Agreement. PM agrees further that no person having any such interest shall be employed by PM.

ARTICLE 5. Schedule of Work

PM shall commence work under this Agreement upon receipt of a Notice to Proceed and shall prosecute the work diligently as described in **Exhibit A** so as to proceed with and complete the Services in compliance with the schedule attached as **Exhibit C**. Time is of the essence and failure of PM to perform work on time as specified in this Agreement is a material breach of this Agreement. If the time to complete the scope of work under **Exhibit C** exceeds five (5) years, District may, at its sole discretion, extend the term of this Agreement pursuant to Article 2 of this Agreement.

ARTICLE 6. Construction Cost Budget

6.1 PM shall have responsibility, along with the Architect, to develop, review, and reconcile the Construction Cost Budget per Project with the Architect and District throughout the design process and construction.

6.2 The Construction Cost Budget shall be the total cost to District of all Project elements the Design Team designs or specifies.

6.3 PM shall work cooperatively with the Project Design Team throughout the Project, including but not limited to, the Schematic Design Phase, Design Development Phase, and Construction Documents Phase, as described in **Exhibit A**, so that the Project's construction cost as designed by the Project Design Team will not exceed the Construction Cost Budget, as may be adjusted subsequently with District's written approval. PM shall notify District if it believes the Project's construction cost of the work by the Project Design Team will exceed the Construction Cost Budget, and/or if it believes the construction cost as designed will exceed the Construction Cost Budget. PM, however, shall not perform or be responsible for any design or architectural services.

- 6.4 Evaluations of District's Construction Budget, and PM's preliminary and detailed cost estimates, represent PM's best judgment as a professional familiar with the construction industry.
- 6.5 If the Bidding Phase has not commenced within ninety (90) days after DSA approval of the plans and specifications, the Construction Cost Budget may be adjusted at District's request to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to District and the date on which proposals are sought.
- 6.6 District may, in its sole discretion, do one, or a combination, of the following if any of the events in Article 6.7 occur:
 - 6.6.1 Give PM written approval of an agreed adjustment to the Construction Cost Budget.
 - 6.6.2 Authorize PM to re-negotiate and/or re-bid the Project, when appropriate, within three (3) months' time of receipt of bids, at no additional cost to District (exclusive of District and other agencies' review time).
 - 6.6.3 Terminate this Agreement if the Project is abandoned by District without further obligation by either party.
 - 6.6.4 Within three (3) months of receipt of bids, instruct Design Team to revise the drawings and specifications (in scope and quality as approved by District) to bring the Project within the Construction Cost Budget for re-bidding. PM will perform cost estimation, value engineering, constructability reviews, and/or bidding support at no additional cost to District.
- 6.7 If any of the following events occur, District may exercise any one, or any combination, of the actions set forth in Article 6.6 above:
 - 6.7.1 The lowest responsive base bid received is five percent (5%) or more in excess of the Construction Cost Budget or
 - 6.7.2 The combined total of base bid and all additive alternates equal or exceed ten percent (10%) of the Construction Cost Budget; or
 - 6.7.3 The Construction Cost Budget increases in phases subsequent to the Schematic Design Phase due to reasonably foreseeable changes in the condition of the construction market in Bay Area, in so far as these have not been caused by Acts of God, earthquakes, strikes, war, or energy shortages due to uncontrollable events in the world economy.

ARTICLE 7. Fee and Method of Payment for Basic Services

- 7.1 District shall pay PM an amount not to exceed _____ Dollars (\$_____) for all services contracted for under this Agreement and based on the Fee Schedule set forth in **Exhibit D**.
- 7.2 District shall pay PM the Fee pursuant to the provisions herein and the method of payment set forth in **Exhibit D**.
- 7.3 PM shall bill its work under this Agreement on a percent of completion basis in accordance with **Exhibit D**.
- 7.4 No increase in fee will be due from change orders generated during the construction period to the extent caused by PM's error(s) or omission(s).
- 7.5 PM's fee set forth in this Agreement shall be full compensation for all of PM's Services incurred in the performance hereof as indicated in **Exhibit D**, including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Project location, offices, per diem expenses, printing, providing or shipping of deliverables in the quantities set forth in **Exhibit A**.
- 7.6 Regardless of the structure of Fee, the Fee may be adjusted downward if the Scope of Services of this Agreement is reduced by the District in accordance with this Agreement.

ARTICLE 8. Payment for Extra Services

- 8.1 Any charges for Extra Services shall be paid by District as described in **Exhibit B** at the rates set forth in **Exhibit D** only upon certification of District's prior written authorization of the claimed Extra Services and the Extra Services have been satisfactorily completed.
- 8.2 PM shall submit to District a written proposal describing the proposed scope of services and listing the personnel, labor duration, rates, and cost. PM shall proceed with Extra Services only upon receiving District's prior written authorization. PM will not be entitled to any compensation for Extra Services performed prior to receiving District's written authorization.
- 8.3 If PM performs any Extra Services without District's authorized representative's prior written authorization, District will not be obligated to pay for such Extra Services. The foregoing provision notwithstanding, PM will be paid by District as described in **Exhibit B** for Extra Services District's authorized representative verbally requests, provided PM confirms such request in writing pursuant to the notice requirements of this Agreement, and proceeds with such Extra Services not earlier than two (2) business days after District receives PM's written confirmation of the request.

ARTICLE 9. Ownership of Data

- 9.1 All of PM's work product prepared or generated in connection with this Agreement is District's property.
- 9.2 Upon District's request, PM shall make available to District all work product completed or in progress at the time of such a request.
- 9.3 After Project completion or, if District exercises the right to terminate this Agreement pursuant to the Agreement terms, PM shall assemble and deliver to District within five (5) calendar days of District's written request, all of PM's work product of the generated, prepared, reviewed or compiled in connection with this Agreement and the Services and authorized Extra Services hereunder. This includes, without limitation, all PM generated documents, copies of all documents PM exchanged with or copied to or from all other Project participants, and all closeout documents. PM shall be index and organize appropriately said Project records for easy use by District personnel.
- 9.4 All Project records are District property, whether or not those records are in PM's possession. District retains all rights to all copyrights, designs, and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that PM or its Consultants prepare or cause to be prepared pursuant to this Agreement. Notwithstanding the preceding sentence, PM and its Consultants shall be entitled to reuse work product generated under this Agreement.

ARTICLE 10. Termination of Contract

- 10.1 District's Request for Assurances: If District at any time reasonably believes PM is or may be in default under this Agreement, District may in its sole discretion notify PM of this fact and request written assurances from PM of performance of Services and a written plan from PM to remedy any potential default under the terms this Agreement that District may advise PM of in writing. PM shall, within ten (10) calendar days of District's request, deliver a written cure plan that meets District's requirements in its request for assurances. PM's failure to provide such written assurances of performance and the required written plan, within ten (10) calendar days of request, will constitute a material breach of this Agreement sufficient to justify termination for cause.
- 10.2 District's Termination of PM for Cause: If PM fails to perform PM's duties to District's satisfaction, or if PM fails to fulfill in a timely and professional manner PM's material obligations under this Agreement, or if PM violates any of the material terms or provisions of this Agreement, District shall have the right to terminate this Agreement effective immediately upon District giving PM written notice thereof. In the event of a termination pursuant to this subdivision, PM may invoice District for all work performed until the notice of termination, but District shall have the right to withhold payment and deduct any

amounts equal to District's costs because of PM's actions, errors, or omissions.

- 10.3 District's Termination of PM for Convenience: District shall have the right in its sole discretion to terminate this Agreement for its own convenience. In the event of a termination for convenience, PM may invoice District and District shall pay all undisputed invoice(s) for work performed until the notice of termination. This shall be the only amount(s) potentially owing to PM if there is a termination for convenience.
- 10.4 PM's Termination of Agreement for Cause: PM has the right to terminate this Agreement if District does not fulfill its material obligations under this Agreement and fails to cure such material default within sixty (60) days of receipt of written notice of said defaults, or if the default cannot be cured within sixty (60) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from PM. Such termination shall be effective after receipt of written notice from PM to District.
- 10.5 Effect on Pre-Termination Services: Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 10.6 Ceasing Services upon Termination: If, at any time in the progress of performing Services under this Agreement, District determines that PM's Services should be terminated, PM, upon District's written notice of such termination, shall immediately cease providing Services, except to transfer files as directed by District. District shall pay PM only the fee associated with the Services provided and approved by District since the last paid invoice and up to the notice of termination.
- 10.7 Suspension: If PM's Services are suspended by District for more than one hundred and eighty (180) consecutive days, PM shall be compensated for services performed prior to notice of such suspension. When PM's Services are resumed, the schedule shall be adjusted and PM's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of PM's Services. PM shall make every effort to maintain the same Program personnel after suspension.

ARTICLE 11. Indemnity

- 11.1 To the furthest extent permitted by California law, PM shall indemnify and hold free and harmless District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("the Indemnified Parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim") that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of PM, its officers, employees, subcontractors,

consultants, or agents, including without limitation, the payment of all consequential damages. PM shall also, to the furthest extent permitted by California law, defend the Indemnified Parties at PM's own expense, including attorneys' fees and costs, from any and all Claim(s) and allegations relating thereto with counsel approved by District where such approval is not to be unreasonably withheld.

- 11.2 PM shall pay and satisfy any judgment, award, or decree that may be rendered against the Indemnified Parties in any Claim. PM's obligation pursuant to Article 11.1 includes reimbursing District for the cost of any settlement paid by the Indemnified Parties and for any and all fees and costs, including but not limited to, legal fees and costs, expert witness fees, and consultant fees, incurred by the Indemnified Parties in the defense of any Claim(s), or to enforce the indemnity herein. PM's obligation to indemnify shall not be restricted to insurance proceeds.
- 11.3 District may withhold from amounts owing to PM any and all costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of PM.

ARTICLE 12. Conduct on Project Site and Fingerprinting

- 12.1 Unacceptable and/or loud language will not be tolerated. "Cat calls" or other derogatory language toward students or public will not be allowed.
- 12.2 Drugs, alcohol, and smoking on District property are strictly prohibited. No drugs, alcohol and/or smoking are allowed at any time in any building and/or grounds on District's property. No students, staff, visitors or contractors are to use drugs on District's property.
- 12.3 Pursuant to Education Code section 45125.2, District has determined on the basis of the scope of Services in this Agreement that PM and its subcontractors and employees will have only limited contact with pupils. PM will promptly notify District in writing of any facts or circumstances which might reasonably lead District to determine that contact will be more than limited as defined by Education Code section 45125.1(d).
- 12.4 PM shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. PM shall not permit any employee to have any contact with District pupils until such time as PM has verified in writing to the governing board of District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. PM's responsibility shall extend to all employees, agents, and employees or agents of its Consultants regardless of whether those individuals are paid or unpaid, concurrently employed by District, or acting as PM's independent contractors. PM shall provide to District verification of compliance with this section by submitting an executed Criminal Background Investigation Certification (**Exhibit E**) prior to commencing

employment or participating on the Program and prior to permitting contact with any student.

- 12.5 For all workers on District property, PM shall comply with all applicable federal, state and local laws regarding COVID-19. Further, except to the extent the Order provides otherwise, PM and PM's personnel shall continue to comply with all other applicable terms in the CDPH's State Public Health Officer Orders. PM shall provide to District verification of compliance with this section by submitting an executed COVID-19 Vaccination/Testing Certification (**Exhibit F**) prior to commencing employment or participating on the Program.

ARTICLE 13. Responsibilities of District

- 13.1 District shall examine the documents submitted by PM and shall render decisions so as to avoid unreasonable delay in the process of PM's Services.
- 13.2 District shall provide to PM as complete information as is available to District regarding District's Project requirements.
- 13.3 District shall retain design professional(s) whose services, duties and responsibilities will be described in written agreement(s) between District and design professional(s).
- 13.4 District shall designate an officer, employee and/or other authorized representatives to act on District's behalf with respect to the Program. District's Program representative shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

ARTICLE 14. Liability of District

- 14.1 Other than as provided in this Agreement, District's obligations under this Agreement shall be limited to the payment of the compensation as provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
- 14.2 PM shall pay to District any and all costs incurred by District, or for which District may become liable, to the extent caused by negligent delays, acts, or omissions of PM in its performance of its Services.
- 14.3 District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by PM, or by its employees, even though such equipment be furnished or loaned to PM by District.
- 14.4 PM hereby waives any and all claim(s) for recovery from District under this Agreement, which loss or damage is covered by valid and

collectible insurance policies. PM agrees to have its required insurance policies endorsed to prevent the invalidation of insurance coverages by reason of this waiver. This waiver shall extend to claims paid, or expenses incurred, by PM's insurance company on District's behalf.

ARTICLE 15. Insurance

15.1 PM shall procure, prior to commencement of Services, and will maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by PM, their agents, representatives, employees and sub-consultant(s). PM's liabilities, including but not limited to, PM's indemnity or defense obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and PM's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated by District, subject to its sole discretion, as a material breach of contract.

15.2 **Minimum Scope and Limits of Insurance:** Coverage shall be at least as broad as the following scopes and limits:

15.2.1 **Commercial General Liability.** Five million dollars (\$5,000,000) per occurrence for bodily injury, personal injury, property damage, death, advertising injury, and medical payments arising from the performance of any portion of the Services. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit.

15.2.2 **Commercial Automobile Liability, Any Auto.** One million dollars (\$1,000,000) per occurrence.

15.2.3 **Workers' Compensation.** Statutory limits required by the State of California. For all of PM's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, PM shall keep in full force and effect, a Workers' Compensation policy. PM shall provide an endorsement that the insurer waives the right of subrogation against District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

15.2.4 **Employer's Liability.** One million dollars (\$1,000,000) per accident for bodily injury or disease. For all of PM's employees who are subject to this Agreement, PM shall keep in full force and effect, an Employment Practices Liability policy. That policy shall provide employers' liability coverage with minimum liability coverage of Two

million dollars (\$2,000,000) per occurrence. PM shall provide an endorsement that the insurer waives the right of subrogation against District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

- 15.2.5 **Professional Liability.** This insurance shall cover PM and its sub-consultant(s), if any, for one million dollars (\$1,000,000) aggregate limit subject to no claim deductible, coverage to continue through completion of construction plus two years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.
- 15.3 District reserves the right to modify the limits and coverages described herein, with appropriate credits or charges to be negotiated for such changes.
- 15.4 **Deductibles and Self-Insured Retention:** Any deductibles or self-insured retention exceeding Twenty-Five Thousand Dollars (\$25,000) must be declared to and approved by District. At the option of District, either:
 - 15.4.1 District can accept the higher deductible;
 - 15.4.2 PM's insurer shall reduce or eliminate such deductibles or self-insured retention as respects District, its officers, officials, employees and volunteers; or
 - 15.4.3 PM shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 15.5 **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
 - 15.5.1 All policies except for the worker's compensation, employer's liability and professional liability insurance policy shall be written on an occurrence form.
 - 15.5.2 District, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of PM; Instruments of Service and completed operations of PM; premises owned, occupied or used by PM; or automobiles owned, leased, hired or borrowed by PM. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. All endorsements shall waive any

right to subrogation against any of the Additional Insureds.

- 15.5.3 Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.
- 15.5.4 PM shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If PM fails to maintain insurance, District may take out comparable insurance, and deduct and retain amount of premium from any sums due PM under the Agreement.
- 15.5.5 PM's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 15.5.6 Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, not renewed, or material change in coverage except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to District.
- 15.5.7 PM's insurance coverage shall be primary and non-contributory insurance as respects the Additional Insureds with respect to any claims related to, arising out of, or connected with the Project. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of PM's insurance and shall not contribute with it.
- 15.5.8 PM shall provide an endorsement that the insurer waives the right of subrogation against District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
- 15.5.9 PM shall require all subconsultants to maintain the level of insurance PM deems appropriate with respect to the consultant's scope of the Work unless otherwise indicated in the Agreement. PM shall cause the subconsultants to furnish proof thereof to District within ten (10) Days of District's request. Should PM not require subconsultants to provide the same level of insurance as is required of PM, as provided in this Agreement, PM is not relieved of its indemnity obligations to District or fulfilling its insurance requirements as provided in this Agreement.
- 15.5.10 If PM normally carries insurance in an amount greater than the minimum amounts required herein, that greater amount shall become the minimum required amount of insurance for purposes of the Agreement. Therefore, PM hereby acknowledges and agrees that all insurance