



NEWARK UNIFIED SCHOOL DISTRICT REQUEST FOR PROPOSALS (RFP)

PROFESSIONAL SERVICES PROPERTY ASSET MANAGEMENT CONSULTANT RFP #02-2022-23

RFP RESPONSE SCHEDULE SUMMARY:

Date	Event
February 7, 2023	Release of RFP
February 10 & 17, 2023	Public Notice
February 21, 2023, 2:00 PM	Deadline to submit written questions
February 23, 2023, 5:00 PM	Deadline for District to answer written questions
February 28, 2023, 2:00 PM	Deadline to submit Proposals
March 7, 2023 (Tentative)	Interview of Qualified/Short Listed Respondents
March 10, 2023 (Tentative)	Intent to Award Notification
March 16, 2023	Board Recommendation to Award Contract
March 17, 2023	Notification to Selected Respondent

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

RFP FOR PROFESSIONAL SERVICES
PROPERTY ASSET MANAGEMENT CONSULTANT

NOTICE IS HEREBY GIVEN that Newark Unified School District (“District”) is requesting qualified persons, firms, partnerships, corporations, associations, or professional organizations to provide comprehensive professional services to District with respect to its facilities asset management, as further described below.

Respondents to this RFP should mail or deliver three (3) bound copies, one (1) unbound copy, and one (1) electronic copy by email or flash drive of their Proposal, as further described herein, to:

Newark Unified School District
Attn: Marie dela Cruz, Chief Business Official
Business Services
5715 Musick Ave
Newark, CA 94560

ALL RESPONSES ARE DUE BY 2:00 P.M., on February 28, 2023. Any Proposal received after that date and time will not be accepted and will be returned unopened.

Each Proposal must conform and be responsive to the requirements set forth in this RFP.

The District reserves the right to waive any informalities or irregularities in received Proposals. Further, the District reserves the right to reject any and all Proposals and to negotiate contract terms with one or more respondent firms for one or more of the work items. The District retains the sole discretion to determine issues of compliance and to determine whether a respondent is responsive, responsible, and qualified. **RESPONDENT IS RESPONSIBLE FOR READING THIS RFP IN ITS ENTIRETY.**

Consulting firm shall comply with all applicable federal, state and local laws regarding COVID-19, including vaccination and testing requirements.

If you have any questions regarding this RFP please call or email Marie dela Cruz at (510) 818-4115 or mdelacruz@newarkunified.org before 2:00 p.m. on February 21, 2023. Answers will be posted on the District website by 5:00 p.m. on February 23, 2023.

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RFP FOR PROFESSIONAL SERVICES
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I. BACKGROUND

Newark Unified School District ("District") is located in the City of Newark, in the County of Alameda, California and serves approximately 5,000 students. The District is comprised of six elementary schools (TK-Grade 5), one middle school, one comprehensive high school, one continuation high school, one independent study school and one adult education program. The District has been facing declining enrollment for many years and recently consolidated and closed two schools to address a long standing structural deficit.

The District is committed to the academic success and social development of all students. Our mission is to empower students in becoming lifelong learners who possess the skills, ethics and creativity to reach their full potential as contributing, productive, responsible citizens. In partnership with the community, the District provides an education that develops the unique abilities of every student.

Newark is located in Alameda County, California, 35 miles south of San Francisco, surrounded by many high-tech headquarters, such as Lucid Motors and Facebook. Although Newark has grown significantly, it still manages to possess a small, hometown charm which many residents say they love about Newark.

The District invites any qualified firm to submit Proposals related to its ability to provide the real estate consulting services with respect to District's facilities asset management, as further described herein. In general, the firm(s) selected as a result of this process will be placed in a pool of qualified firms for future consideration to provide strategic planning services to the District.

II. GENERAL INFORMATION

A. Limitations

This RFP is not a formal offer by the District to contract with any party responding to this RFP. The District reserves the right to reject any and all responses, and likewise, the District reserves the right to contract with any entity responding to this RFP. The District also reserves the right to amend this RFP as necessary. The District makes no representation that participation in the RFP 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 RFP. The awarding of a contract, if at all, is at the sole discretion of the District.

The District reserves the right to reject any or all Proposals, to waive any irregularities or informalities not affected by law, to evaluate each Proposal submitted, and to award contracts, if any, according to the Proposals which best serves the interest of the District at a reasonable cost to the District. Any contract(s) resulting from this RFP, however, will be made according to the form of the professional services agreement attached to this RFP as **Attachment "1"**.

The Respondent's Proposal package, and any other supporting materials submitted to the District in response to this RFP 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 Proposal, 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, Proposals 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 responses. Furthermore, the District will have no liability to the Respondent or other party as a result of any public disclosure of any Proposal package.

The selected Firm and any of its subconsultants shall comply with all applicable federal, state, and local laws regarding COVID-19, including vaccination and testing requirements.

B. Restrictions on Lobbying and Contacts

From the period beginning on the date of the issuance of this RFP and ending on the date of the award of the contract, no person, or entity responding to this RFP, 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 RFP, 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 entity submitting a Proposal.

C. Full Opportunity

The District hereby affirmatively ensures that Disadvantaged Business Enterprises ("DBE"), Small Local Business Enterprises ("SLBE"), Small Emerging Local Business Enterprises ("SELBE"), and Disabled Veterans Business Enterprises ("DVBE") shall be afforded full opportunity to submit in response to this RFP. No Respondent will be discriminated against on the basis of race, color, gender, sexual orientation, age, ancestry, religious creed, marital status, national origin, medical condition or physical disability in any consideration leading to the award of the contract.

III. SCOPE OF SERVICES

A. District Needs

The District seeks a property asset management consultant ("Consultant") to provide facilities asset management guidance and related support services (collectively, "Services"). Any firm selected based on this RFP process must be capable of providing full real estate and property asset management consulting with respect to the Services in accordance with the District's form of the professional services agreement attached to this RFP as **Attachment "1"**.

These Services will be provided by the Consultant to complete an inventory of existing school facilities and property owned by the District and their current use and develop a plan with recommendations for their potential future use. The District seeks a plan and recommendations for its facilities highest and best use and in the best interest of the District. Potential use may include, but not be limited to, school facilities closure, lease, joint use or occupancy, property exchange or surplus property disposition/sale in accordance with applicable Education Code requirements.

Firm(s) will be selected based on proposals, qualifications and demonstrated competence in providing the Services that may include, but not be limited to, the following general categories of work:

1. Accurately identify asset type, location, age, and quantity;
2. Develop a comprehensive inventory of District facilities, identifying District needs and surpluses;
3. Advise District on options for potential use;
4. Formulate reliable projections of potential revenue according to future use or surplus property disposition/sale;
5. Meet with District staff and committee, as well as engage the community and other key stakeholders, in order to deliver Services and complete deliverables;
6. Attend meetings of the Board of Education to present progress reports, updates, and deliverables;
7. Prepare a final report that includes recommendations on the highest and best use of District facilities, including rationale, projected revenue and budget.

The projected date for commencement of the Services is March 20, 2023, with a projected date for completion by June 30, 2023.

This description of Services is provided for guidance only as part of the RFP. A proposal submitted in response to this RFP will include an approach and work plan that demonstrates the Consultant's understanding of this description, and shall contain significant detail to define the tasks and the approaches the Consultant intends to perform to complete the work. The Consultant's work plan will also demonstrate the ability to complete the required work within the term of the contract and shall contain a detailed schedule, showing the task sequence, time required for each task and subtask, and total time estimated to perform the work. The schedule will also indicate target dates, deliverables, milestones, and review periods on the schedule.

IV. REQUIRED INFORMATION AND FORMAT

Firms responding to this RFP must comply with the following format requirements. The proposal should be clear, concise, complete, well organized and **limited to no more than 25 single-sided pages in total length**. Proposal material must be in 8-1/2 x 11 inch format.

Respondents shall provide: three (3) bound copies; one (1) unbound copy; and one (1) electronic copy by email or flash drive of their Proposals.

- The **bound copy** shall include divider tabs labeled with boldface headers below; e.g., the first tab shall be entitled "Cover Letter", the second tab shall be entitled "Firm Information", etc.
- The **unbound copy** shall be marked "Copy for Reproduction", and shall be formatted as follows:
 - No divider sheets or tabs.
 - 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 by email or flash drive in the following programs: PDF.

The Proposal is to demonstrate the qualifications, competence, and capacity of the firm, as well as specify Consultant's approach and methods in conformance with all

federal, state, District, and local requirements. All Proposals shall address the following items in the order listed below:

A. Cover Letter

Provide a letter of introduction signed by an authorized officer of the Respondent firm **not to exceed two (2) pages**. The Cover Letter shall include all of the following:

- Include a brief description of why Respondent is well suited for, and can meet, the District's needs and provide the Services.
- Clearly identify the individual(s) who are authorized to speak for the Respondent during the evaluation process.
- Include one (1) of the following statements:
 - "[INSERT RESPONDENT'S NAME] received a copy of the District's form of Independent Consultant Agreement for Special Services ("Agreement") attached as Attachment "1" to the RFP. [INSERT RESPONDENT'S NAME] has reviewed the indemnity provisions and insurance provisions contained in the Agreement. If given the opportunity to contract with the District, [INSERT RESPONDENT'S NAME] has no objections to the use of this Agreement."

OR

- "[INSERT RESPONDENT'S NAME] received a copy of the District's form of Independent Consultant Agreement for Special Services ("Agreement") attached as Attachment "1" to the RFP. [INSERT RESPONDENT'S NAME] has reviewed the indemnity provisions and insurance provisions contained in the Agreement. If given the opportunity to contract with the District, [INSERT RESPONDENT'S NAME] has objections to the use of this Agreement, listed in detail in the Appendix to this Proposal."
- 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 Respondent has ever been convicted on an ethics violation.
- Respondent must include evidence that Respondent is legally permitted to conduct business in the State of California, and is properly licensed, if applicable, to perform the Services.
- Respondent shall sign and add the following language: "By virtue of submission of this Statement of Qualifications/Proposal, [INSERT RESPONDENT'S NAME] declares that all information provided is true and correct."

B. Firm Information

This section should provide a brief description of the firm, including:

- Firm name.
- Address.
- Telephone number.
- Website.
- Name and **email** of main contact.
- Federal Tax Identification Number.
- License or Registration Number, if applicable.

- Type of organization (e.g., corporation, partnership, etc.). If a joint venture, describe the division of responsibilities between participating companies, offices (location) that would be the primary participants, and percentage of interest of each firm.
- A brief description and history of Respondent, including number of years the firm has been in business, and the date the firm was established under its given name.
- Number of employees (licensed professionals, technical support), and names and titles of officers of the firm.
- Location of the office where the bulk of services solicited will be performed.
- State of California certification for Respondent of Small Business or Disabled Veteran Business Enterprise status, if any.

C. Relevant Qualifications

This section should provide a brief statement of interest and qualifications for providing the requested services, including:

- 1. Personnel:** Submit resume(s) or profiles of the individuals who will be tasked to provide the requested services, including a brief description of their qualifications and recent related experience providing similar services.
- 2. Past Performance:** Provide a description of past performances of similar services for public K-12 school districts and related experience. Please include:
 - A list of five (5) school district client references that include:
 - District name and the name of the main contact person, title, telephone number, and email address to be contacted for a reference.
 - The date(s) of the work performed (preferably within the past 3 years).
 - The scope of the work performed.
 - Identify key individuals of the Firm involved and their role.
- 3. Recent Report:** One (1) recent facilities management report or similar to this RFP's deliverable, prepared by your firm for a school district client. (This report will not be counted against the 25-page limit.)

D. Litigation History/Disciplinary Action

- 1. Litigation:** Provide a comprehensive five (5) year summary of the Respondent's litigation, arbitration, mediation, and negotiated/settlement history with previous clients. State the issues in the litigation, the status of the litigation, names of parties, and outcome. (A Proposal that fails to provide the requested information on lawsuits or litigation, and responses which assert attorney-client privilege and fail to provide information requested, will be considered non-responsive, disqualified from the selection process, and will not be evaluated.)
- 2. Disciplinary Action:** Provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past five (5) years with state regulatory bodies or professional organizations.

E. Form of Agreement

Any Respondent selected based on this RFP process must be able to execute the District's Independent Consultant Agreement for Special Services ("Agreement"), which is distributed with this RFP as **Attachment "1"** and incorporated herein by this reference. Any objections/proposed changes to the form of the Agreement shall be stated in writing in an Appendix attached to the Proposal. Clear identification of the Agreement term and condition objected to, an explanation of the objection, and proposed revised language shall be provided. The District will not consider any objections/proposed changes to the Agreement that are raised after the deadline for Proposals.

F. Fee Proposal

The Fee Proposal shall include the following items:

- **Services:** The proposed maximum fee (inclusive of all fees, indirect and direct costs, overhead, expenses, general administrative costs, mileage and travel, reimbursables, materials, labor, and reasonable profit) for the performance of all services in connection with the Proposal (inclusive of all meeting attendance, notices, required documents and reports, analyses, calculations, publications, responses to questions, communications, and mailings required to satisfy legal, public review, notice, public hearing, and adoption processes and requirements in conformance with industry-wide accepted best practices). Please state whether the proposed maximum fee is a Flat Rate Fee for the Services, or a Not-To-Exceed Fee for the Services.
- **Schedule of Rates:** Schedule shall include hourly rates by position (as proposed), staffing plan (as proposed), and reimbursable schedule (as proposed).

V. SELECTION PROCESS

A. Criteria

All Proposals received by the specified deadline will be reviewed by the District for content, including but not limited to proposed fees, related experience, and professional qualifications of the Respondents.

The District will evaluate all Proposals. Each Proposal must be complete. Incomplete Proposals will be considered non-responsive and grounds for disqualification. The District retains the sole discretion to determine issues of compliance and to determine whether a Respondent is responsive, responsible, and qualified. Based upon the information presented in the Proposals, the District may elect to conduct interviews with some or all of the Respondents. After the interviews, if any, the District will identify the Respondent(s) that can provide the greatest overall benefit to the District for inclusion in a pool of qualified firms for future consideration to provide the services.

The criteria for evaluating submissions may include, without limitation, the following:

- Experience and performance history of the Respondent with similar services and clients;
- Experience and results of proposed personnel;
- References from clients contacted by the District;
- Technical capabilities and track record of use;
- Cost and value of services under proposed fees;
- Overall responsiveness of the Proposal;
- The Respondent's approach to, and understanding of, the services;
- Previous District experience with the Respondent; and
- Other qualifications/criteria, as deemed appropriate in the District's sole discretion.

The District will require the selected firm to maintain general liability (minimum \$1,000,000 per occurrence / \$2,000,000 aggregate) with additional endorsement page naming the District as additionally insured, automobile insurance, professional liability and worker's compensation insurance.

B. District Investigations

The District may perform investigations of Respondents that extend beyond contacting the references identified in the Proposals. The District may request a Respondent 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.

C. Interviews

The District, at its sole discretion, may elect to interview selected Respondent(s). The District may elect to interview one or more Respondents. If a Respondent is requested to interview, the key proposed staff will be expected to attend the interview. The interview will be an opportunity for the District's Selection Committee to review the Respondent's proposal and other matters the committee deems relevant to its evaluation. **Any comments or proposed changes to the form of Agreement attached hereto as Attachment "1" may be the subject of inquiry at the interview.**

D. Final Determination and Award

The District reserves the right to contract with any entity responding to this RFP for all or any portion of the work described herein, to reject any Proposal as non-responsive, and/or not to contract with any Respondent for the services described herein. The District makes no representation that participation in the RFP process will lead to an award of contract or any consideration whatsoever. The District reserves the right to contract with any firm not participating in this process. The District shall in no event be responsible for the cost of preparing any Proposal in response to this RFP, including any supporting materials.

Awarding of contract(s) is at the sole discretion of the District. The District may, at its option, determine to award contract(s) only for portions of the scope of work identified herein. In such a case, the Respondent(s) will be given the option not to agree to enter into the contract and the District will retain the right to negotiate with any other Respondent 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 to this RFP.

ATTACHMENT 1

FORM OF AGREEMENT

**INDEPENDENT CONSULTANT AGREEMENT FOR SPECIAL SERVICES
(Property Asset Management Consultant)**

This Independent Consultant Agreement for Special Services ("Agreement") is made and entered into as of the _____ day of _____, 2023 ("Effective Date"), by and between the **Newark Unified School District**, a California public school district ("District"), and _____ ("Consultant"), (together, "Parties").

RECITALS

WHEREAS, Government Code section 53060 authorizes District to contract with and employ any person for the furnishing of special services and advice in financial, economic, accounting, legal, or administrative matters if such person is specially trained and experienced and competent to perform the special services required;

WHEREAS, Consultant is specially trained and experienced and competent to perform the services required by District, and those services are needed on a limited basis; and

WHEREAS, Consultant is free from the control and direction of District in connection with the performance of the Services (as defined below), both under the Agreement and in fact; Consultant's Services are outside the usual course of District's business; and Consultant is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Services.

NOW, THEREFORE, the Parties agree as follows:

TERMS

1. **Services.** Consultant shall provide property asset management consulting services for facilities asset management as further described in **Exhibit A**, attached hereto and incorporated herein by this reference ("Services").
2. **Term.** Consultant shall commence providing the Services under this Agreement upon execution of the Agreement by both parties and will diligently perform such Services as required. The term for Services and schedule to provide Services shall be in accordance with the schedule included in **Exhibit A** attached hereto.
3. **Proposal of Documents.** Consultant shall not commence the Services under this Agreement until Consultant has submitted and District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

- Signed Agreement
- Workers' Compensation Certification
- Fingerprinting/Criminal Background Investigation Certification
- Insurance Certificates and Endorsements
- W-9 Form
- COVID-19 Vaccination/Testing Certification

4. **Compensation.** District compensation to the Consultant shall be as set forth in **Exhibit A** as the proposed fee for services, but in no event shall total fees, costs, and expenses exceed _____ Dollars (\$_____) without the express written approval of the District's Board of Education. District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing services for District, other than as provided in **Exhibit A**. Consultant shall invoice the

District for services rendered. Invoices must include invoice number, invoice date, dates of service, detailed description of service, Purchase Order number, payment rate, total payment due, remit to address, vendor name and contact information.

5. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement ("Equipment"). 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 Consultant or Consultant's agents, personnel, employee(s), and/or subconsultant(s), even if such Equipment is furnished, rented or loaned to Consultant by the District.
6. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant represents and warrants that: (A) Consultant is free from the control and direction of District in connection with the performance of the Services, both under the Agreement and in fact; (B) Consultant's Services are outside the usual course of District's business; and (C) Consultant is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Services.

Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of District, and are not entitled to benefits of any kind or nature normally provided employees of District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Consultant 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 Consultant's employees. By checking the applicable box below, Consultant hereby represents and warrants to District the following:

- Consultant is and shall be a resident of the State of California or is otherwise exempt from withholding. To the extent an exemption is sought, Consultant will provide District with appropriate evidence including, without limitation, FTB Form 590. Consultant shall still be responsible for payment of all state and federal taxes.
- Consultant is not a resident of the State of California or otherwise not exempt from withholding, and Consultant authorizes District to withhold from all payments made to Consultant under this Agreement all taxes required to be withheld by law. (See, e.g., California Revenue & Taxation Code section 18661 et seq.)

7. **Performance of Services.**

- 7.1. **Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.
- 7.2. **Safety and Security.** Consultant is responsible for maintaining safety in the performance of this Agreement.
- 7.3. **Originality of Services.** Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepare for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.

- 7.4. **Copyright/Trademark/Patent.** Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all rights, titles and interests in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to the use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
- 7.5. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.

8. Termination.

- 8.1. **For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by Consultant or no later than three (3) calendar days after the day of mailing, whichever is sooner.
- 8.2. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include material violation of this Agreement by Consultant; or any act by Consultant exposing District to liability to others for personal injury or property damage.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate.

9. Insurance.

- 9.1. Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments in the form of Comprehensive General Liability and Contractual Liability. Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000

Automobile Liability Insurance - Any Auto Single Combined Limit	\$ 1,000,000
Professional Liability Insurance	\$ 1,000,000
Workers' Compensation and Employers' Liability Insurance	\$ 1,000,000

9.2. **Proof of Insurance.** Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to District and approved by District. Likewise, upon request, Consultant shall furnish the certificates to the District showing maintenance of the required insurance coverage and original endorsements.

9.3. **Other Insurance Provisions.** Each insurance policy shall contain, or be endorsed to contain, the following provisions:

(a) Endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf.

(b) The District, its Board, members of its Board, representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insured") are to be covered as Additional Insureds as respects to liability arising out of activities performed by or on behalf of the Consultant; instruments of Service and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

(c) For any claims related to the Services, the Consultant's insurance coverage shall be primary insurance as respects to the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Consultant's insurance and shall not contribute with it.

(d) 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.

(e) The Consultant'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.

(f) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

10. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of District and all federal, state, and local laws, ordinances and regulations. If Consultant performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.

10.1. Permits/Licenses. Consultant shall obtain and keep in force throughout the Term of this Agreement all qualifications-based or professional licenses, permits, and certificates necessary for the performance of the Services. Consultant and all of Consultant's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services in the State of California pursuant to this Agreement.

10.2. COVID-19 Mandatory Compliance with Federal, State and Local Laws. Consultant shall continue to comply with all applicable federal, state and local laws regarding COVID-19. Further, except to the extent the Order provides otherwise, Consultant and Consultant personnel shall continue to comply with all other applicable terms in the CDPH's State Public Health Officer Orders.

11. Fingerprinting. The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing any portion of the Services. Consultant expressly acknowledges that the following conditions shall apply to any work performed by Consultant and/or Consultant's employees on a school site:

11.1. All site visits shall be arranged through the District;

11.2. Consultant and Consultant's employees shall inform District of their proposed activities and location at the school site, allowing District time to arrange site visits without a disruption to the educational process;

11.3. Consultant and/or Consultant's employees shall check in with the school office each day immediately upon arriving at the school site;

11.4. Once at such location, Consultant and Consultant's employees shall not change locations without contacting the District;

11.5. Consultant and Consultant's employees shall not use student restroom facilities;

11.6. If Consultant and Consultant's employees find themselves alone with a student, Consultant and Consultant's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location;

11.7. Consultant and Consultant's employees working on the school site must submit or have submitted fingerprints in a manner authorized by the Department of Justice, together with the requisite fee as set forth in Education Code Section 45125.1;

11.8. Consultant shall not permit any employee to come in to contact with students until the Department of Justice has ascertained that the employee has not been convicted of a serious or violent felony;

11.9. Consultant shall certify in writing to the NUSD that none of the employees who may come in contact with students have been convicted of a serious or violent felony;

11.10. Consultant shall provide to NUSD a list of names of its employees who may come in contact with students; and

11.11. The Consultant is required to fulfill these requirements at its own expense.

12. Indemnification. To the furthest extent permitted by California law, Consultant shall, at its sole cost and expense, indemnify and hold harmless the District and its governing board, members of the governing board, agents, representatives, officers, consultants,

employees, trustees, and volunteers (the "Indemnified Parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "Claims") of any kind, nature, and description, directly or indirectly arising out of, connected with, pertaining to, or resulting from the negligence, recklessness, or willful misconduct of the Consultant. Consultant shall, to the furthest extent permitted by California law, defend the Indemnified Parties at Consultant's own cost and expense, from any and all Claim(s) and allegations relating thereto with legal counsel approved by the District, where such approval is not to be unreasonably withheld.

13. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation 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. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission or electronic mail, addressed as follows:

District:

NEWARK UNIFIED SCHOOL DISTRICT
5715 Musick Ave
Newark CA, 94560
Fax: (510) 794-2199
Email: mdelacruz@newarkunified.org
ATTN: Marie dela Cruz

Consultant:

[NAME]

_____, CA 9____
Fax: _____
Email: _____
ATTN: _____

Any notice personally given or sent by facsimile transmission or electronic mail shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) calendar days after deposit in the United States mail.

15. **Disputes.** In the event of a dispute between the parties as to performance of the Services, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, disputes may be determined by mediation if mutually agreeable, otherwise by litigation. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, Consultant shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to Consultant's right to bring a civil action against District. For purposes of those provisions, the running of the time within which a claim must be presented to District shall be tolled from the time Consultant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process. Pending resolution of the dispute, Consultant agrees it will neither rescind the Agreement nor stop the performance of the Services.

16. **Anti-Discrimination.** It is the policy of the District that there is no discrimination against any employee engaged in the Services because of race, color, gender, sexual orientation, political affiliation, age, ancestry, religion, marital status, national origin, medical condition or disability. Therefore, Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment

and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735.

17.Integration/Entire Agreement of Parties. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

18.California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California.

19.Venue. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which District’s administrative offices are located.

20.Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

21.Severability. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

22.Interpretation. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

23.Signature Authority. Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.

24.Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one Agreement binding all the Parties hereto.

25.Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

NEWARK UNIFIED SCHOOL DISTRICT

[CONSULTANT]

By: _____
Print Name: Marie dela Cruz
Print Title: Chief Business Official

By: _____
Print Name: _____
Print Title: _____

Information regarding Consultant:

License No.: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Type of Business Entity:

- _____ Individual
- _____ Sole Proprietorship
- _____ Partnership
- _____ Limited Partnership
- _____ Corporation, State: _____
- _____ Limited Liability Company
- _____ Other: _____

_____:

Employer Identification and/or
Social Security Number

NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, District requires Consultant to furnish the information requested in this section.

**EXHIBIT A
DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT**

The Consultant shall, during the term of the Agreement, perform the following Services:

[CONSULTANT'S PROPOSAL TO BE INSERTED]

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing satisfactory proof to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Services of this Agreement.

Date: _____

Name of Consultant: _____

Signature: _____

Print Name and Title: _____

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with District prior to performing any Services under this Agreement.)

FINGERPRINTING AND CRIMINAL BACKGROUND CHECK CERTIFICATION
(NON-CONSTRUCTION CONTRACTS)

In accordance with the Department of Justice fingerprint and criminal background investigation requirements of Education Code section 45125.1 et seq.

With respect to the Independent Contractor Agreement for Services ("Agreement") between the **Newark Unified School District** ("District") and _____ ("Contracting Party"):

One of the boxes below must be checked with regard to Contracting Party and Contracting Party's personnel (officers, principals, paid or unpaid employees, volunteers, agents, subtenants and subcontractors of Contracting Party who will provide services under the Agreement) ("Contracting Party's Personnel") and the arrangements verified by an authorized representative of District prior to commencement of the Agreement.

- Fingerprinting/Background Check requirements do not apply because Contracting Party/Contracting Party's Personnel will not have any interaction with District pupils based on the type of service being provided, the location at which services will be provided, or for other reason (Specify):

- Contracting Party/Contracting Party's Personnel qualify for a waiver of fingerprint/criminal background check requirements on the following basis:

- The services provided by Contracting Party/Contracting Party's Personnel are for an emergency or exceptional situation, such as when pupil health or safety is endangered or when repairs are needed to make school facilities safe and habitable. [Ed. Code, §45125.1(b)]

- Contracting Party/Contracting Party's Personnel will have no interaction with District pupils that is not under the immediate supervision and control of the pupil's parent/guardian. Enter details of parental supervision:

- Contracting Party/Contracting Party's Personnel will have no interaction with pupils that is not under the immediate supervision and control of a District employee who has been properly fingerprinted and undergone background checks. Enter details of District employee supervision arrangements:

- Contracting Party is a sole proprietor who may interact with District pupils not under the immediate supervision of a pupil's parent, guardian or District employee, and in accordance with the fingerprinting requirements of Education Code section 45125.1(h), hereby agrees to the District's preparation and submission of fingerprints so that the California Department of Justice may determine (A) that Contracting Party has not been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). No work or action under the Agreement shall commence until the Department of Justice ascertains that Contracting Party has not been convicted of a felony as defined in Government Code Section 45122.1.

- Contracting Party is not a sole proprietor and has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contracting Party's Personnel who may interact with District pupils not under the immediate supervision of a pupil's parent, guardian or District employee during the term of the Agreement, and the

California Department of Justice has determined (A) that none of Contracting Party's Personnel has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). When the Contracting Party performs the criminal background check, it shall immediately provide any subsequent arrest and conviction information it receives to the District pursuant to the subsequent arrest service. A complete and accurate list of Contracting Party's Personnel who may come in contact with District pupils during the course and scope of the Agreement is attached hereto. No work or action under the Agreement shall commence until the Department of Justice ascertains that none of Contracting Party's Personnel has been convicted of a felony as defined in Government Code Section 45122.1.

CONTRACTING PARTY CERTIFICATION

I am a representative of the Contracting Party entering into this Agreement with the District, and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of the Contracting Party. By signing below, I certify that the information contained on this certification form is accurate. I understand that it is Contracting Party's sole responsibility to maintain, update, and provide the District with current "Fingerprint and Criminal Background Check Certification" information for all Contracting Party's Personnel throughout the duration of the Agreement. **A list of Contracting Party's Personnel is attached hereto as Attachment A.**

Date: _____

Contracting Party: _____

Signature: _____

Print Name: _____

Title: _____

ATTACHMENT "A"

Contracting Party's Personnel

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

If further space is required for the list of personnel, attach additional copies of this page.