

**ALUM ROCK UNION SCHOOL DISTRICT**

**INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES  
DEVELOPMENT OF FEASIBILITY STUDY REGARDING WORKFORCE HOUSING**

This Independent Consultant Agreement for Professional Services ("Agreement") is made as of the \_\_\_ day of April, 2023, between the **Alum Rock Union School District**, a California public school district ("District"), a California public school district, and **Education Housing Partners, Inc.**, a California nonprofit public benefit corporation ("Consultant"). The District and Consultant may be individually referred to herein as a "Party" or collectively referred to herein as the "Parties."

**WHEREAS**, Public Contract Code section 20111, subdivision (d), provides that professional services, requiring specialized knowledge, training, or skill, are not subject to public bidding requirements; and

**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; and

**WHEREAS**, the District is in need of those services and/or advice; and

**WHEREAS**, Consultant is specially trained, experienced, competent to perform the special 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:

- 1. Services.** Consultant shall furnish to the District workforce housing feasibility study services for certain District sites as further described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work").
- 2. Term.** Consultant shall commence providing Services under this Agreement once executed by both Parties ("Effective Date") and will diligently perform as required or requested by District as applicable, and complete performance within 180 days following the Effective Date ("Term"). The Term may be extended upon the written consent of District.
- 3. Submittal of Documents.** Consultant shall not commence the Work under this Contract until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

¶

Signed Agreement

W-9 Form

Insurance Certificates & Endorsements

Workers' Compensation Certificate attached as **Exhibit "C"**

Fingerprinting/Criminal Background Investigation Certification attached as **Exhibit "E"**

- 4. Compensation.** District agrees to pay the Consultant for Services satisfactorily rendered pursuant to this Agreement, at the rates indicated and as more specifically described in **Exhibit "B,"** on an hourly basis or flat rate basis as applicable to the phase of Work, and up to a maximum amount, not-to-exceed **Three Hundred Ninety-Eight Thousand and 00/100 Dollars (\$398,000.00).**
- 4.1.** District shall pay Consultant only for all undisputed amounts in installment payments within thirty (30) days after the Consultant submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.
- 4.2.** Consultant must provide, to the District's satisfaction, appropriate substantiation for all Services or Work performed on an hourly basis. Consultant shall properly support payment of all hourly services, as further described herein, for each invoice or application for payment submitted by Consultant for its Services and Work. Failure to satisfy this requirement will result in Consultant's invoice or application for payment being rejected until District approves Consultant's full compliance herewith.
- 4.3.** To substantiate Consultant's hourly performance of the Services or Work, Consultant at a minimum must set forth (i) the date, (ii) location of the Services or Work, (iii) amount of time spent on each task performed that day, (iv) a sufficiently-detailed description of the Services or Work for the task, and (v) the day's total number of hours. Merely stating the date and total number of hours worked shall be deemed insufficient.
- 4.4. Agreement Number.** The District will issue an agreement number for this Agreement as part of the District's fiscal accounting and payment procedures. The agreement number shall be included in all requests for payment hereunder. The District may change the agreement number during the term of the Agreement. The District's revision of an agreement number shall not be considered a material or substantive change to the Agreement.
- 5. Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing the Work.
- 6. Materials.** Consultant shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.
- 7. Independent Contractor.** Consultant represents and warrants that Consultant is an independent contractor or business entity that is: (i) free from the control and direction of the District in connection with the performance of the Services, (ii) performing Services that are outside the usual course of the District's business, and (iii) customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Services performed, District being interested only in the results obtained. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's 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.

## **8. Standard of Care.**

- 8.1.** 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. Consultant's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts. Consultant's Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.
- 8.2.** Consultant hereby represents that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of the Agreement.
- 8.3.** Consultant shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Consultant understands that the District relies upon such professional quality, accuracy, completeness, and coordination by Consultant in performing the Services.
- 8.4.** Consultant shall ensure that any individual performing work under the Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the work assigned to them.

**9. Originality of Services.** Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared 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.

**10. Work Product.** 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 right, title and interest 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.

## **11. Termination.**

**11.1. 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 the Consultant or no later than three days after the day of mailing, whichever is sooner.

**11.2. With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

**11.2.1.** Material violation of this Agreement by the Consultant; or

**11.2.2.** Any act by Consultant exposing the District to liability to others for personal injury or property damage.

**11.2.3.** Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

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. In the event of this termination, the District may secure the required Services from another Consultant. If the expense, fees, and/or costs to the District exceeds the cost of providing the Services pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

**11.3.** Upon termination, Consultant shall provide the District with all documents produced maintained or collected by Consultant pursuant to this Agreement, whether or not such documents are final or draft documents.

**12. Indemnification.** To the furthest extent permitted by California law, Consultant shall indemnify, and hold harmless the District, its officers, employees, and trustees ("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, including without limitation the payment of all direct damages ("Claim"), to the extent caused by the negligence or willful misconduct of Consultant, its officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services in conjunction with this Agreement. Consultant shall, to the furthest extent permitted by California law, defend the Indemnified Parties at Consultant's own expense, from any and all Claim(s) and allegations relating thereto with counsel approved by District where such approval is not to be unreasonably withheld.

**13. Insurance.**

**13.1.** 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
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Property Damage, Advertising Injury, and Medical	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
<b>Automobile Liability Insurance - Any Auto</b>	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
<b>Professional Liability</b>	\$ 1,000,000
<b>Workers Compensation</b>	Statutory
<b>Employer's Liability</b>	\$ 1,000,000

**13.1.1. Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that insure against all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from Consultant's performance of any portion of the Services. (Form CG 0001 and CA 0001)

**13.1.2. Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services in accordance with provisions of section 3700 of the California Labor Code. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services. That policy shall provide employers' liability coverage per accident for bodily injury or disease.

**13.1.3. Professional Liability.** Professional Liability (Errors and Omissions) Insurance as appropriate to the Consultant's profession.

**13.2. Proof of Carriage 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's have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

**13.2.1.** Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

**13.2.2.** An endorsement for each policy stating that coverage shall not be canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to District.

**13.2.3.** An endorsement stating that the District and the State and their representatives, employees, trustees, officers, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. 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.

**13.2.4.** An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District.

**13.2.5.** An endorsement stating that there shall be a waiver of any subrogation against the District and its respective elected officials, officers, employees, agents, representatives, contractors, trustees, and volunteers.

**13.2.6.** All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.

**13.2.7.** 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.

**13.3. Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

**14. Assignment.** The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant.

**15. Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of the District and all applicable federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and

regulation bearing on conduct of the Work as indicated or specified. If Consultant observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated in accordance with Section 11.2. 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.

**15.1 Labor Code Requirements:** If required by law, Consultant shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1 – 5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with the District.

**15.1.1 Registration:** If applicable, before a public works contract can be awarded, Consultant and its subcontractor(s) shall be registered with the Department of Industrial Relations in accordance with Labor Code section 1771.1. At least one week before commencing work, Consultant shall provide to the District the name and DIR registration number for Consultant and any applicable subcontractor.

**15.1.2 Certified Payroll Records:** If applicable, Consultant and its subcontractor(s) shall keep accurate certified payroll records of workers and shall electronically submit certified payroll records directly to the Department of Industrial Relations weekly or within ten (10) days of any request by the District or the Department of Industrial Relations.

**15.1.3 Labor Compliance:** Consultant shall perform the Services of the Project while complying with all the applicable regulations, including section 16000, et seq., of Title 8 of the California Code of Regulations and is subject to labor compliance monitoring and enforcement by the Department of Industrial Relations.

**16. Conflict of Interest.** Consultant 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, Consultant hereby certifies that no current District official or employee of the District, and no one who has been a District official or employee of the District within the past two years has participated in bidding, selling or promoting this Agreement. Consultant 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 the District.

**17. Subcontractors.** Consultant may contract for or employ at Consultant's expense, subcontractors to the extent deemed necessary for completion of its Services or Work, licensed as required by applicable law. The names of subcontractors and a detailed scope of Work to be performed by any subcontractors shall be submitted to the District for approval prior to commencement of Services by a subcontractor. The District reserves the right to reject Consultant's use of any particular subcontractor. District shall not approve any invoice or application for payment submitted that includes costs for Services performed by a subcontractor that has not been approved by District. In the event Consultant contracts with or employs a subcontractor for the Work or Services, Consultant shall pay all subcontractor invoices within thirty (30) days of receipt or as otherwise agreed to by Consultant and the subcontractor, in compliance with applicable law; all Consultant payments to and records between its subcontractor(s) shall be subject to the audit provisions herein this Agreement. Nothing in the foregoing shall create any contractual relationship between the District and any

subcontractor(s) employed by Consultant under the terms of this Agreement.

**18. Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

**19. Safety and Security.** Consultant is responsible for maintaining safety in the performance of this Agreement. Consultant shall be responsible to ascertain from the District the rules and regulations pertaining to safety and security when present on school grounds, particularly when children are present.

**20. Intentionally Deleted. .**

**21. Anti-Discrimination.** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Therefore, the Consultant agrees to comply with applicable Federal and California laws including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, Executive Orders 11246, 11375, and 12086, the California Fair Employment and Housing Act beginning with Government code section 12900, Labor Code section 1735, and other applicable federal and state laws and regulations hereinafter enacted, including the Federal Americans with Disabilities Act (ADA). Firms shall be responsible for establishing and implementing an ADA program within the Firm's work place. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).

**22. Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing of any portion of the Services. Although District has determined that fingerprinting is not applicable to this Agreement, Consultant expressly acknowledges that the following conditions shall apply to any work performed by Consultant and/or Consultant's employees on a school site:

**22.1.** All site visits shall be arranged through the District;

**22.2.** 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;

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

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

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

**22.6.** 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.

**23. District's Right to 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 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 District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents. Consultant acknowledges and agrees that the District's Audit Right, pursuant to the foregoing provisions, shall apply to, and may be utilized by the District for the production of, any records or documents subject to disclosure under the California Public Records Act, Government Code § 6250 et seq. ("CPRA"), unless otherwise exempt, and which may include, but are not limited to, records or documents in the District's constructive possession but under Consultant's control regardless if created, sent, received, stored, or maintained in a personal account or device of Consultant or its employees, as prescribed by applicable law. In the event the District exercises District's Audit Right in response to or as part of a request under the CPRA, Consultant agrees to provide District with an affidavit, if and as needed or requested by District, within five (5) days of District's request therefor, that certifies Consultant's search for and production of responsive records subject to disclosure pursuant to the CPRA, if any.

**24. District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any manner which is permissible under the law. The District's evaluation may include, without limitation:

- 24.1.** Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
- 24.2.** Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).

**25. 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.

**26. Limitation of Consultant's Liability.** District hereby agrees that to the fullest extent permitted by law, the Consultant's total liability to District for any or all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to this Agreement from any cause or causes including but not limited to the Consultant's negligence, errors, omissions, breach of contract or breach of warranty shall not exceed District's reasonable attorneys' fees and costs incurred in the suit, together with the amount paid to Consultant for its services under this Agreement or the total amount of Consultant's insurance coverage available at the time of settlement or judgment, whichever is greater, regardless of theories of liability or causes of action asserted against Consultant.

**27. Mutual Waiver of Consequential Damages.** District and Consultant waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

**28. Disputes.** In the event of a dispute between the parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Consultant shall neither rescind the Agreement nor stop Work. 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.

**29. Confidentiality.** The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

**30. 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:

**Alum Rock Union School District**

2930 Gay Avenue  
San Jose, CA 95127  
Tel: (408) 928-6847  
Fax: (408) 928-6400  
Email: kolvira.chheng@arUSD.org  
ATTN: Kolvira Chheng

**Consultant**

39 Forrest Street, Suite 202  
Mill Valley, CA 94941  
Tel: (415) 381-3001  
Fax: (415) 381-3003  
Email: bd@thompsondorffman.com  
ATTN: Bruce Dorfman, CEO

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) days after deposit in the United States mail.

**31. 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.

**32. 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. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the California County in which the District's administration offices are located.

**33. 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.

**34. 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.

**35. Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. 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.

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

**37. Authority of Executing Officer or Party.** By signing below, the signer represents that they have the legal right, power, and authority to enter into and execute this Agreement and to bind the Party on whose behalf the signer executes this Agreement.

**38. 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.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

Dated: \_\_\_\_\_, 20\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_

**Alum Rock Union School District**

**Education Housing Partners, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: Hilaria Bauer, PH.D.

Print Name: Bruce Dorfman

Print Title: Superintendent

Print Title: Chief Executive Officer

**Information regarding Consultant:**

Address: 39 Forrest Street, Suite 202  
Mill Valley, CA 94941

\_\_\_\_\_  
Employer Identification and/or Social  
Security Number

Telephone: (415) 381-3001

Facsimile: (415) 381-3003

E-Mail: bd@thompsondorfman.com

**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.**

Type of Business Entity:

- Individual
- Sole Proprietorship
- Partnership
- Limited Partnership
- Corporation, State: California
- Limited Liability Company
- Other: \_\_\_\_\_

## **EXHIBIT "A"**

### **Scope of Services**

Consultant shall perform the Services described herein.

- 1. District Sites.** The Services shall be delivered with respect to the following District sites ("Sites"):
  - Renaissance Academy at Mathson, located at 2050 Kammerer Avenue, San Jose, CA 95116; and
  - District Office, located at 2930 Gay Avenue, San Jose, CA 95127.
- 2. Background Research.** Determine the feasibility for housing the District's workforce, including analysis of the desirability and need for mixed-income (affordable and/or below-market and/or market) workforce rental housing at the Sites, logistical considerations of constructing and maintaining workforce housing at the Sites, analysis of the Sites for the development, type and size of proposed units, estimate of overall cost, financing scenarios including tax credits, district financing, grants and any other specialized programs or State of CA incentives, and the likelihood of success of goal for long-term retention of District teachers and staff.
- 3. Feasibility Study.** Develop feasibility study for housing of the District's workforce, including analysis of the desirability and need for workforce housing in the District, logistical considerations of constructing and maintaining workforce housing, analysis of the Sites for the development of the housing, development options including tax credits, lease-lease back, and District financing (in support of District's financial advisor), and likelihood of success of goal for long-term retention of District teachers and staff.
- 4. Summary of Findings.** (1) Prepare a memo that summarizes the overall findings, including a recommendation for implementation of a workforce housing project. Include time for review and revision with staff, (2) Prepare a final report that explains the methodology, findings, considerations, and recommendations, and (3) Prepare a final summary based on public input.
- 5. Presentations.** Present findings and recommendations to the District Board and respond to comments and questions.
- 6. Phases I and II.** The Services shall be performed according to the following Phase I and Phase II activities with respect to the Sites and according to the Schedule of Work provided below. Consultant will commence Phase II Services as directed by District.

#### **Phase I – Screen Sites for Workforce Housing:**

- Meet with District to discuss District objectives, determine scope of housing program, and review District property to identify housing sites.
- Evaluate sites in terms of location, size, zoning/general plan designations, adjacent uses, and other factors necessary to support workforce housing.
- Complete preliminary physical and political due diligence on appropriate housing sites.
- Provide recommendations to District of site(s) for detailed Feasibility Analysis.

## **Phase II – Complete Feasibility Study for Workforce Housing for Identified Sites:**

### **Physical and Political Due Diligence Management**

- Engage physical due diligence consultants (i.e., geotechnical, civil engineer, biological, environmental firms) to complete supporting analysis.
- Review General Plan, Objective Design Guidelines, and zoning standards and meet with City staff to review approval process and identify site and/or community issues.
- Survey market comparables to determine housing alternatives and rental rates.
- Obtain title report to confirm easements and other exceptions to title.

### **Design Management**

- Retain an architect to develop floor plans, building plans, and elevations.
- Develop a housing program including product types, unit mix, unit types, general outline of specifications, and amenities for targeted resident demographics.
- Prepare conceptual site and infrastructure plans and identify any utility limitations.
- Create and evaluate multiple development scenarios for the identified site(s).

### **Economic Analysis**

- Engage general contractors to price conceptual design package and determine schedule.
- Solicit full-scope A&E budgets.
- Advise on value engineering considerations.
- Determine utility connection and other municipal fees.
- Prepare operating expense and reserve budget.
- Outline predevelopment and construction schedules and budgets.
- Generate financial analysis for the proposed project.

### **Entitlements**

- Develop entitlement strategy and schedule.
- Identify the approval process for the City and any related agency approvals, to the extent required.
- Identify required elements for CEQA compliance.
- Outline subsequent steps and outstanding items required for project approval.
- Coordinate pre-application package.
- Attend a District meeting to present plans and explain feasibility studies and process.

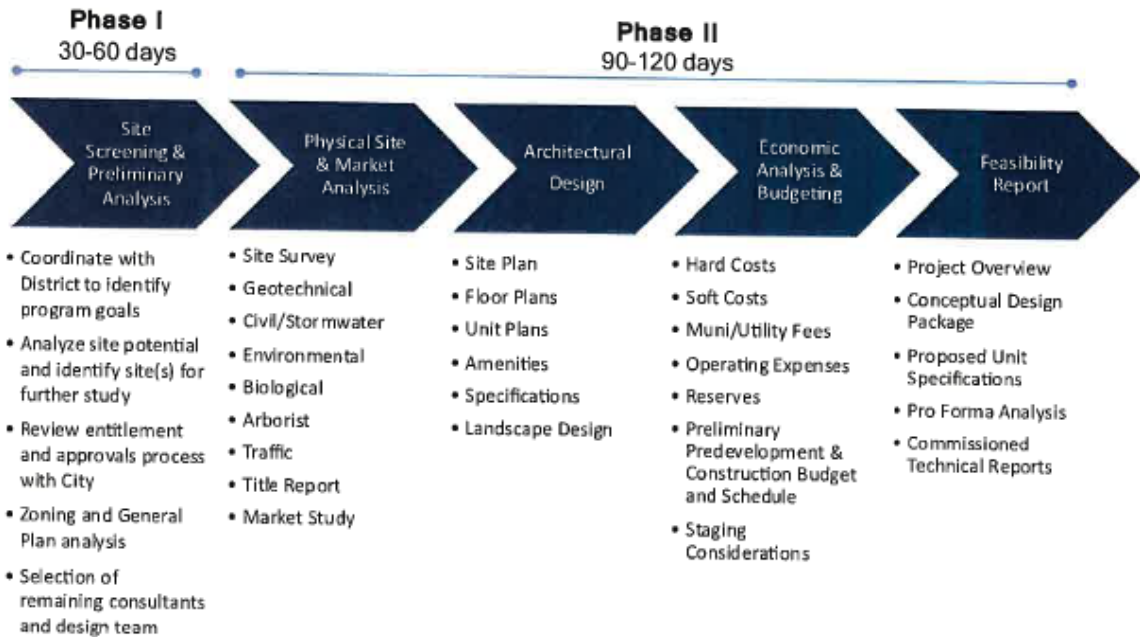
### **Administrative**

- Interview, recommend and contract with a design team and any other consultants.
- Review and approve all requests for payment by the consultant team.
- Process accounting and progress billings (at the direction of the District).

### **Other**

- Initiate community outreach with neighborhood residents or groups (as required).
- Provide monthly overall update reports.

**7. Schedule of Work.** Consultant will deliver the Phase I and Phase II Services in accordance with the following schedule:



As shown in the above diagram, we anticipate that the first phase will require 30 to 60 days to complete an initial analysis of District property to determine which site(s) best meet the objectives of the housing program, including scope and program (number and types of units). Once this is completed, and at the direction of the District, we typically require 90 to 120 days to prepare an in-depth evaluation of the physical, economic, and political constraints involved with developing the proposed project (the Feasibility Study). Working in concert with your staff, we will then provide you with a detailed program, predevelopment and development budget, schedule, conceptual design alternatives, and project economics that meet the District's objectives while providing a high likelihood of the City of San Jose's approval.

**8. Personnel.** The following key positions in Consultant's firm will be associated with the Services:

Name	Position Title	Phase I Services (FTE)	Phase II Services (FTE)
<b>Education Housing Partners, Inc.</b>			
Bruce Dorfman	Managing Partner	30%	20%
Will Thompson	Managing Partner	10%	10%
Joanna Julian	Senior Program Director	25%	25%
Marlon Just-Vargas	Senior Project Manager	15%	25%

**EXHIBIT "B"**

**Schedule of Fees and Charges**

**1. Phase I Fees.**

Consultant will perform the Services during Phase I on an hourly basis at the rate of Two Hundred Fifty and 00/100 Dollars (\$250.00) per hour, not to exceed the total amount of Four Thousand and 00/100 Dollars (\$4,000.00) per Site.

**2. Phase II Fees.**

Services during Phase II, inclusive of Consultant and Consultant's subconsultant or subcontractor fees, will be performed for a flat fee that shall not exceed the total amount of One Hundred Ninety-Five Thousand and 00/100 (\$195,000.00) per Site, in accordance with the below fee schedule.

**PHASE II SERVICES (A)**

<u>Consultant</u>	<u>Low</u>	<u>High</u>
Education Housing Partners, Inc.	\$40,000	\$40,000
Architects	\$25,000	\$40,000
Civil Engineer	\$10,000	\$15,000
Geotechnical Engineer	(B)	\$10,000
Survey	(B)	\$20,000
Misc. Consultants (Traffic/Biologist/Arborist/etc)	(B)	\$20,000
Civil Engineer	\$10,000	\$20,000
Environmental (Phase I)	(B)	\$5,000
Land Use/Contracts Counsel	\$5,000	\$10,000
Reimbursable Costs	\$5,000	\$15,000
	<u>\$95,000</u>	<u>\$195,000</u>

(A) Budget per site; EHP's fee for additional sites will be discounted 20%.

(B) Assumes report is already in District possession or not required.

Note: All third party costs will be billed on a "Not-to-Exceed Basis". Any budget not spent by consultants will not be invoiced. EHP can contract with all consultants and the District can reimburse EHP, or the District can contract directly with consultants. If EHP contracts directly with consultants, a 10% administrative fee is charged on all third party costs.

**EXHIBIT "C"**

**WORKERS' COMPENSATION CERTIFICATION**

Labor Code Section 3700 in relevant part provides that 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 proof satisfactory 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 Work of this Contract.

Date: \_\_\_\_\_

Proper Name of Consultant: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

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 the District prior to performing any Work under this Contract.)



**EXHIBIT "D"**

**PREVAILING WAGE AND  
RELATED LABOR REQUIREMENTS CERTIFICATION**

I hereby certify that I will conform to the State of California Public Works Contract requirements, if applicable and required by law, regarding prevailing wages, benefits, on-site audits with five (5) business days' notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project including, without limitation, labor compliance monitoring and enforcement by the Department of Industrial Relations.

Date: \_\_\_\_\_

Name of Consultant: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

**EXHIBIT "E"**

**FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION**

The undersigned does hereby certify to the District that I am a representative of the Consultant entering into this Agreement with the District; that I am familiar with the facts herein certified; and that I am authorized and qualified to execute this certificate on behalf of Consultant.

Consultant certifies that it has taken at least one of the following actions (check all that apply):

- The Work of the Agreement is either (i) at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of the Agreement shall come in contact with the District pupils or (ii) if Consultant's employees or any subcontractor or supplier of any tier of the Contract interacts with pupils, such interaction shall only take place under the immediate supervision and control of the pupil's parent or guardian or a school employee, so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Consultant under the Agreement.
  
- Consultant, who is not a sole proprietor, has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Consultant's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined (A) that none of those employees 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 Consultant 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. No work shall commence until the Department of Justice ascertains that Consultant's employees and any subcontractors' employees have not been convicted of a felony as defined in Government Code Section 45122.1.

**A complete and accurate list of Consultant's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto as ATTACHMENT "A."**

- Consultant is a sole proprietor and intends to comply with the fingerprinting requirements of Education Code section 45125.1(h) with respect to all Consultant's employees who may have contact with District pupils in the course of providing services pursuant to the Agreement, and hereby agrees to the District's preparation and submission of fingerprints such that the California Department of Justice may determine (A) that none of those employees 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). No work shall commence until the Department of Justice ascertains that Consultant has not been convicted of a felony as defined in Government Code Section 45122.1.

Consultant's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of Consultant.

Date: \_\_\_\_\_

Name of Consultant: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**FINGERPRINTING CERTIFICATION / CRIMINAL BACKGROUND INVESTIGATION**  
**ATTACHMENT "A"**

**List of Employees/Subcontractors**

**Name/Company:** \_\_\_\_\_

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**Name/Company:** \_\_\_\_\_

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

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