

**HAYWARD UNIFIED SCHOOL DISTRICT**  
**24411 Amador Street**  
**Hayward, CA 94544**  
**510.784.2600**



**RFP/Q PROGRAM MANAGEMENT**

**RFP/Q 24.137**

**RFP/Q DUE DATE AND TIME**

**March 19, 2024 – 2:00pm**

## **REQUEST FOR QUALIFICATIONS/PROPOSALS (RFQ/P)**

Notice is hereby given that the governing board (“Board”) of the **Hayward Unified School District** (“District”) will receive sealed submittals for the following project:

### **24.137 Program Management (Measure I 2024)** (“Project” or “Contract”)

Proposers must submit sealed submittals on or before **Tuesday, March 19, 2024, at 2:00 p.m.**, at the District Administration/ Purchasing Department, located at 24411 Amador St, Hayward, California, 94544 at or after which time the District will open the RFQ/P’s and publicly read them aloud. Any claim by a Proposer of error in its submittal must be made in compliance with Public Contract Code § 5100, et seq. Any submittal that is submitted after this time shall be non-responsive and returned to the Proposer. The District is not responsible for submittals of RFQ/P’s that are received after the deadline noted above.

The Project consists of: The Hayward Unified School District (“**District**”) is requesting submission of statements of qualifications and proposals (together, “**Response(s)**”) from qualified firms, partnerships, corporations, associations, persons, or professional organizations (“**Firm(s)**”) to perform program management or level services, as needed and directed by the District, for its projects as needed and directed by District (“**Project(s)**”).

All submittals of RFQ/P’s shall be on the form provided by the District. Each submittal of an RFQ/P must conform and be responsive to all pertinent Contract Documents, including, but not limited to, the Request for Qualifications/Proposals.

Contract Documents are available on the Districts website at <https://www.husd.us/purchasing>

The District’s Board reserves the right to reject any and all submittals of RFQ/P’s and/or waive any irregularity in any RFQ/P’s received. Unless otherwise required by law, no Proposer may withdraw its RFQ/P’s for ninety (90) days after the date of the bid opening.

All proposers’ questions must be submitted in writing via email to Purchasing Manager @ [vcoronado@husd.k12.ca.us](mailto:vcoronado@husd.k12.ca.us) no later than **5:00 p.m., on Thursday, March 7, 2024**.

The District is planning to engage in major modernization projects, new construction, site development, planning, and growth projects, should the District’s local school Bond Measure I pass on March 5, 2024.

Date of Advertisement #1: 2/23/24

Date of Advertisement #2: 3/1/24

HAYWARD UNIFIED SCHOOL DISTRICT  
24411 AMADOR STREET, HAYWARD, CA 94544

March 23, 2024

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REQUEST FOR STATEMENTS OF QUALIFICATIONS  
FOR  
PROGRAM MANAGEMENT SERVICES

The Hayward Unified School District (“**District**”) is requesting submission of statements of qualifications and proposals (together, “**Response(s)**”) from qualified firms, partnerships, corporations, associations, persons, or professional organizations (“**Firm(s)**”) to perform program level services, as needed and directed by the District, for its projects as needed and directed by District (“**Project(s)**”).

District is authorized by California Government Code section 4525, et seq., to contract with and employ any persons for the furnishing of architecture, landscape architecture, engineering, environmental services, land surveying, and construction management through a fair, competitive selection process, which District is utilizing.

This request is not a formal request for bids or an offer by District to contract with any firm responding to this Request for Statements of Qualifications (“**RFQ**”). **All Firms that have currently or in the past provided program management services to District MUST still respond to this RFQ.**

Firms that intend to submit a Response must satisfy the following requirements:

- Be insured;
- Either be a licensed architect, engineer, or contractor; and
- Firm can be located anywhere, but it must maintain a staffed office within 75 miles of District.

**Questions.** Questions regarding this RFQ/P must be in writing and directed only to Victoria Coronado, [vcoronado@hayward.k12.ca.us](mailto:vcoronado@hayward.k12.ca.us) by the date indicated in the RFQ/P Schedule. All questions must be submitted by **5:00 PM on Thursday, March 7, 2024**. District may respond to questions presented via addenda to this RFQ. **FIRMS MUST NOT CONTACT ANY OTHER DISTRICT PERSONNEL DIRECTLY WITH INQUIRIES REGARDING THIS RFQ.**

**Responses.** Interested Firms are invited to submit a sealed response to the **District Administration/ Purchasing Department, located at 24411 Amador St, Hayward, California, 94544** in accordance with this RFQ no later than **2:00 PM on Tuesday, March 19, 2024**. The District will not accept late Responses.

Thank you for your interest in working with the Hayward Unified School District.

1. **General Information.**

- 1.1. **General.** District invites qualified Firms to submit a Response related to its ability to provide the Services, as more fully indicated herein. Firms must be appropriately licensed to perform the Services and have extensive experience with the Office of Public School Construction (“**OPSC**”), California Building Standards Code (Title 24, California Code of Regulations), Department of Toxic Substances Control, and the Division of the State Architect (“**DSA**”). Firms must have extensive experience in the management of the construction of public school facilities in addition to being a public school district representative, working with architects, inspectors, construction managers, contractors and other school facility related consultants, and establishing project scope and project budgets.
- 1.2. **Scope of Services.** The selected Firm must be prepared to perform program level services, as directed by the District, as described in the Form of Agreement for Program Management Services (“**Agreement**”) attached hereto as **Attachment A (“Services”)**.

2. **Firms’ Responses.** Each Firm’s Response must be concise, well organized, and demonstrate Firm’s qualifications. It must be consecutively numbered on each page and must include the following information, using the outline structure and numbering system reflected below, except as may be otherwise directed by District via written addenda. Firm’s Response must **be no longer than FIFTY-FIVE (55) pages**, inclusive of résumés, forms, and pictures. Two hard copies and one e-copy of the RFQ/P must be submitted.

- 2.1. **Cover Letter / Letter of Interest.** A dated Letter of Interest must be submitted, including the legal name of Firm(s), address, telephone, and the name, title, and signature of the person(s) authorized to submit the Response on behalf of Firm.
- 2.2. **Table of Contents.** A table of contents of the material contained in the Response should follow the Letter of Interest.
- 2.3. **History / Structure.** Provide a brief history of Firm, and, if a joint venture, of each participating entity. Identify legal form, ownership, and senior officials of company(ies). Describe number of years in business and types of business conducted.
- 2.4. **Financial Resources.** Provide a statement of Firm’s financial resources, certifying the correctness of that information.
- 2.5. **Insurance.** Please provide a statement demonstrating that Firm can meet the insurance requirements as set forth in Exhibit E of the Agreement.
- 2.6. **Education.** Indicate ongoing commitment to professional education of staff, total number of permanent employees, and any other data that may assist District in understanding Firm’s qualifications and expertise.
- 2.7. **Proposed Personnel / Firm Team.**
- 2.7.1. Include resumes of key personnel who would be performing Services for District. Specifically, define the role of each person and outline the person’s individual experience and responsibilities. Indicate personnel who will serve as primary contact(s) for District. Indicate Firm’s and personnel’s availability to provide the Services, and list all applicable professional registration certification and/or license designations and numbers for all professional team members that are currently active in the State of California.

- 2.8. **Services Offered.** Provide a comprehensive description of the services offered by Firm, including the following:
- 2.8.1. Describe the Firm's experience with prioritizing, structuring and sequencing construction projects in a bond program and preparing master schedules.
  - 2.8.2. Describe the Firm's experience with performing constructability reviews, value engineering and other construction cost reduction measures.
  - 2.8.3. Describe how Firm intends to assist District in meeting established project budgets and in prioritizing projects to meet budget. Describe Firm's approach to preserving, and maximizing return, on expended bond funds.
  - 2.8.4. Discuss Firm's experience with developing a Management Information System (MIS) to assist in establishing communications between the District, Program Manager, design professional(s), contractor(s) and other parties on each Project.
  - 2.8.5. Describe Firm's experience managing bond programs, within political environments including facilitation of community involvement.
  - 2.8.6. Describe Firm's experience with various state agencies including DSA, local fire authorities, local public works departments, California Geological Survey, California Department of Education, Office of Public School Construction and the State Allocation Board.
- 2.9. **Claims.** Provide a statement of **ALL** claim(s) filed against Firm in the past five (5) years. Briefly indicate the nature of the claim and the resolution, if any, of the claim(s). For the claim(s) identified herein, identify which claims proceeded to mediation, settlement meetings or similar dispute resolution proceedings, and describe the outcome of the mediation or other proceeding.
- 2.10. **References.** Include letters of reference or testimonials, if available. Firm should limit letters of reference or testimonials to no more than ten (10).
- 2.11. **Conflicts of Interest.** Provide a statement of any recent, current, or anticipated contractual obligations that relate in any way to similar work for District construction or bond projects, or any other work with District that may have a potential to conflict with Firm's ability to provide the Services described herein. **Except for the Services specifically contracted for under its Agreement(s) with District (if any), a Firm cannot submit, propose, bid, contract, subcontract, consult, or have any other economic interests in a project to which Firm may provide those Services.**
- 2.12. **Firm's Current Work Commitments.** Specify the projected workload of Firm and describe if any future commitment may impact Firm's ability to complete the Services as required herein.
- 2.13. **Past Programs.** Identify all experience that the Firm has in providing services to school districts at multiple project sites as part of the management of a construction program. Firm may list up to 10 programs. Include the following information for each program:
- 2.13.1. Name of program and district,
  - 2.13.2. Scope of work, description of services provided,
  - 2.13.3. Contact person and telephone number at district, and
  - 2.13.4. Firm person in charge of each program.

- 2.14. **Additional Data.** Provide additional information about the Firm as it may relate to Firm’s Response.
- 2.15. **Compensation.** Provide Firm’s proposed fee for performance of the Services. State if the proposed fee would be based on an hourly rate, an hourly rate with a maximum “not to exceed” for each Project, a percentage of the construction costs, a combination of these structures, or another structure.
- 2.15.1. **Fee Schedule.** Provide a current fee schedule for the types of services the Firm offers which will be used for the performance of, if approved by the District, hourly work for Services or for Extra Services. If referencing basic services costs, include typical staffing expectations, professional fee schedules, and variations that the District could expect for specific types of projects, if applicable.
- 2.15.2. **Billing Practices.** Please also provide detailed information on your billing practices (i.e. lump sum, percentage-based, other), including reimbursable cost categories and hourly billing rates by position for additional services.
- 2.15.2.1. **Additional Costs.** Identify any additional fees, costs, expenses or reimbursable fees for which Firm would be seeking compensation.
- 2.16. **Agreement Form (Attachment A).** If a Firm has any comments or objections to the Agreement, it must provide those comments or objections in its Response. The Agreement (which includes insurance and indemnification provisions) specifies the Services generally, but District reserves the right to adjust the Agreement and Services as necessary. **PLEASE NOTE: District will not consider any substantive changes to the form of Agreement if they are not submitted at or before the time Firm’s Response is due.**

### **3. District’s Evaluation / Selection Process.**

- 3.1. **Selection.** Based on its evaluation of Responses, District staff will select Firm(s) based on the following criteria, without limitation:
- 3.1.1. Experience and performance history of the Firm with program management.
- 3.1.2. Experience and performance history of the Firm with the District
- 3.1.3. Experience and results of proposed personnel
- 3.1.4. References from clients contacted by the District
- 3.1.5. Technical capabilities and track record of their use
- 3.1.6. Overall responsiveness of the Response
- 3.1.7. Firm’s pricing information
- 3.2. **Interviews.** From Firms who provide a Response to District, District may, at its discretion, interview some or all of those Firms. If interviews occur, Firm’s proposed program manager, assistant program manager, account executive and program administrator must attend. District may instruct Firms regarding other staff members required to attend interviews in its sole discretion.
- 3.3. **District Investigations.** The District may perform investigations of proposing parties that extend beyond contacting the districts identified in a Firm’s Response.
- 3.4. **Final Determination and Award.** The District reserves the right to contract with any entity responding to this RFQ, to reject any Response as non-responsive, and not to contract with any Firm for the Services described herein. The District makes no representation that participation in the RFQ process will lead to an award of contract or any consideration whatsoever. The District reserves the right to seek Responses from or to contract with any Firm not participating in this process. District intends to

make recommendations to the Board of Education and ask the Board to award contract(s).

**4. Terms and Conditions.**

- 4.1. District is not responsible for late delivery of a Response or the cost of preparing any Response. It is the responsibility of the responding Firm to ensure that the Response is submitted on time to District. Responses that are received after the deadline may not be considered.
- 4.2. The selected Firm(s) and each of its (their) subconsultants and/or co-venture partners, must comply with all 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 any other applicable federal and state laws and regulations hereinafter enacted, including the Federal Americans with Disabilities Act (“**ADA**”). Firms must be responsible for establishing and implementing an ADA program within Firm’s workplace. Firms must not discriminate against any prospective or active employee based on 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. The selected respondent must cause the above provisions to be inserted in all subcontracts for any work covered by this RFQ so that such provisions will be binding upon each subconsultant.
- 4.3. **Public Records.** Responses will become the property of District and subject to the California Public Records Act, Government Code sections 7920.000 et seq. Those elements in each Response that are trade secrets as that term is defined in Civil Code section 3426.1(d) or otherwise exempt by law from disclosure and which are prominently marked as “TRADE SECRET,” “CONFIDENTIAL,” or “PROPRIETARY” may not be subject to disclosure. District must not be liable or responsible for the disclosure of any such records including, without limitation, those so marked if disclosure is deemed to be required by law or by an order of the Court. A Firm that indiscriminately identifies all or most of its response as exempt from disclosure without justification may be deemed non-responsive. In the event District is required to defend an action on a Public Records Act request for any of the contents of a response marked “Confidential,” “Proprietary,” or “Trade Secret,” Firm agrees, by submitting a Response, to defend and indemnify District from all costs and expenses, including attorneys’ fees, in any action or liability arising under the Public Records Act.

Attachment A

AGREEMENT FOR PROGRAM MANAGEMENT SERVICES  
BY AND BETWEEN  
HAYWARD UNIFIED SCHOOL DISTRICT AND  
[INSERT NAME]

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EXHIBIT A            Scope of Services

CERTIFICATES



This Agreement for Program Management Services ("**Agreement**") is made as of \_\_\_\_\_ 20\_\_\_\_\_, between the **Hayward Unified School District** ("**District**") and \_\_\_\_\_ ("**Program Manager**") (individually a "**Party**" and collectively the "**Parties**"), for Program Management Services ("**Project**").

This Agreement is for the provision of program management services by Program Manager to and on behalf of the District for the District's Measure "I" bond program ("**Program**"). The Program includes multiple components. Any one of the components or combination thereof, including without limitation the Program as a whole, may be changed or terminated without changing in any way the remaining component(s). The provisions of this Agreement shall apply to each component without regard to the status of the remaining component(s). Program Manager shall invoice for each component separately and District shall compensate Program Manager for each component separately on a proportionate basis based on the level and scope of work completed for each component.

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

#### **Article 1. Definitions**

In addition to the definitions above, the following definitions for words or phrases shall apply when used in this Agreement, including all Exhibits:

- 1.1. **Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
- 1.2. **Construction Manager(s):** Those entities responsible for the management of the District's Program construction projects.
- 1.3. **Program Manager(s):** The entity listed in the first paragraph including all subcontractor(s), or agent(s) to the Program Manager.
- 1.4. **District:** The **Hayward Unified School District**.
- 1.5. **DSA:** The Division of the State Architect.
- 1.6. **Extra Services:** Extra Services are defined in **Article 5**.
- 1.7. **Fee:** The Program Manager's Fee is defined herein, payable as set forth herein and in **Article 5**.
- 1.8. **Service(s):** All labor, materials, supervision, services, tasks, and work that the Program Manager is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary to manage the design, construction, and completion of the Project.

#### **Article 2. Scope, Responsibilities and Services of Program Manager**

- 2.1. **Scope:** Program Manager shall provide the Services described herein and under **Exhibit A** for the Project. The District reserves the right to change the Services of which the Parties agree may require the Program Manager's Fee and Scope as well as certain terms and conditions of this Agreement to be adjusted by an amendment, in writing and signed by both Parties.
- 2.2. **Coordination:** In the performance of Program Manager's services under this Agreement, Program Manager agrees that it will maintain such coordination with District personnel and/or its designated representatives as may be requested and desirable.

- 2.3. **Program Manager’s Services:** Program Manager shall act as the District’s agent to render the Services and furnish the work as described in **Exhibit A**, which will commence upon the receipt of a Notice to Proceed signed by the District representative. Program Manager’s services will be completed in accordance with the schedule set forth herein.

**Article 3. Program Manager Staff**

- 3.1. The Program Manager has been selected to perform the work herein because of the skills and expertise of key individuals (“**Key Personnel**”).
- 3.2. The Program Manager agrees that the following Key Personnel in Program Manager’s firm Program Managers shall be associated with the Project in the following capacities:

<b>Job Title:</b>	<b>Program Manager’s Personnel/Employees:</b>
Account Executive	[Insert Name]
Program/Project Manager	[Insert Name]
Program/Project Manager	[Insert Name]
Program/Project Administrator	[Insert Name]

- 3.3. The Program Manager shall not change any of the Key Personnel listed above without prior written approval by District, unless an individual ceases to be employed by Program Manager. In all cases, whether upon initial designation or changing of Key Personnel, District shall have the right to interview and shall approve all Key Personnel.
- 3.4. If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice the Program Manager shall immediately remove that person from the Project and provide a temporary replacement. Program Manager shall within seven (7) days provide a permanent replacement person acceptable to the District. All lead or key personnel for any Program Manager must also be designated by the Program Manager and are subject to all conditions previously stated in this paragraph.
- 3.5. Program Manager, Program Manager’s employees, or any person associated with the Services shall conduct themselves in a manner appropriate for a school site. The District will not permit any (1) verbal or physical contact with neighbors, students, or faculty; (2) profanity, or inappropriate attire or behavior; (3) photographing, videoing, or audio recording of any neighbors, students, or faculty or any posting of any photographs, videos, or audio recordings of any neighbors, students, or faculty on any internet site, social media platform of any kind, regardless of source of any photograph, video, or audio recording. District may require Program Manager to permanently remove noncomplying persons from Project Site.
- 3.6. Program Manager represents that the Program Manager has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of services required under this Agreement and that no person having any such interest shall be employed by Program Manager.

**Article 4. Schedule of Services / Term**

- 4.1. The Program Manager shall commence Services under this Agreement upon receipt of a Notice to Proceed for the Project, and shall perform the Services diligently as described in **Exhibit A** and in accordance with the schedule set forth herein. Time is of the essence and failure of Program Manager to perform Services on time as specified in this Agreement is a material breach of this Agreement.

**Article 5. Fee and Method of Payment**

- 5.1. District shall pay Program Manager an amount not to exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for which Program Manager shall bill its work under this Agreement on a monthly time and materials basis in accordance with the terms set forth herein. (“Fee”).
- 5.2. Program Manager shall submit monthly invoices on a form and in the format approved by the District. Program Manager shall submit these invoices in duplicate to the District via the District’s authorized representative.
- 5.3. Upon receipt and approval of Program Manager’s invoices, the District agrees to make payments on all undisputed amounts within thirty (30) days of receipt of the invoice.
- 5.4. The Program Manager’s Fee set forth in this Agreement shall be full compensation for all of Program Manager’s Services incurred in the performance thereof as indicated herein, including, without limitation, overhead, administrative cost, profit, all costs for personnel, travel within two hundred (200) miles of the Project location, offices, per diem expenses, printing, providing, or shipping of deliverables in the quantities set forth in **Exhibit A**. The mark-up on any approved item expenses or deliverables shall not exceed five percent (5%).
- 5.5. The Fee shall not exceed the amount set forth in this Agreement, including all billed expenses, without advance written approval of the District. The Fee shall be paid in accordance with the hourly rates as indicated below (“**Fee Schedule**”).

<b>Job Title</b>	<b>Hourly Rate</b>
Account Executive	\$ ____
Program/Project Manager	\$ ____
Program/Project Manager	\$ ____
Program/Project Administrator	\$ ____

**5.6. Payment for Extra Services**

- 5.6.1. District-authorized Services outside of the scope in **Exhibit A** or District-authorized reimbursable fees not included in Program Manager’s Fee are “Extra Services.” Any charges for Extra Services shall be paid by the District in accordance with the terms for payment as set forth in this Agreement and only upon certification that the claimed Extra Services were authorized in writing in advance by the District and that the Extra Services have been satisfactorily completed.
- 5.6.2. A written proposal describing the proposed scope of services and listing the personnel, labor duration, rates, and cost shall be submitted by the Program Manager to the District for written approval before proceeding with any Extra Services.
- 5.6.3. The mark-up on any approved item of Extra Services shall not exceed five percent (5%).

## Article 6. Ownership of Data

After completion of the Program or after termination of this Agreement, Program Manager shall deliver to District a complete set of Program records, including without limitation all documents generated by Program Manager, copies of all documents exchanged with or copied to or from all other Program participants, and all closeout documents. Program records shall be indexed and appropriately organized for easy use by District personnel. All Program records are property of the District, whether or not those records are in the Program Manager's possession.

## Article 7. Termination of Agreement

- 7.1. **District's Right to Terminate for Cause.** If Program Manager fails to perform Program Manager's duties to the satisfaction of the District, or if Program Manager fails to fulfill in a timely and professional manner Program Manager's material obligations under this Agreement, or if Program Manager violates any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement effective immediately upon the District giving written notice thereof to the Program Manager. In the event of a termination pursuant to this subdivision, Program Manager may invoice District for all work performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs, including the costs to retain a new firm in place of Program Manager, because of Program Manager's actions, errors, or omissions that caused the District to terminate the Program Manager.
- 7.2. **District's Right to Terminate Without Cause.** District shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Program Manager may invoice District and District shall pay all undisputed invoice(s) for work performed until the notice of termination. This shall be the only amount(s) potentially owing to Program Manager's if there is a termination for convenience.
- 7.3. **Program Manager's Right to Terminate.** The Program Manager has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement and fails to cure such material default within sixty (60) days, or if the default cannot be cured within sixty (60) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from Program Manager. Such termination shall be effective after receipt of written notice from Program Manager to the District.
- 7.4. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 7.5. If, at any time in the progress of the Project, the governing board of the District determines that the Project should be terminated, the Program Manager, upon written notice from the District of such termination, shall immediately cease work on the Project. The District shall pay the Program Manager only the Fee associated with the Services provided, since the last invoice that has been paid and up to the notice of termination.
- 7.6. If the Project is suspended by the District for more than one hundred and eighty (180) consecutive days, the Program Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the schedule shall be adjusted and the Program Manager's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Program Manager's services. Upon resumption of the Project after suspension, the Program Manager will take all reasonable efforts to maintain the same Project personnel.

## **Article 8. Indemnity**

- 8.1. Program Manager shall indemnify, protect, and hold free and harmless the District, its agents, representatives, officers, Program Managers, employees, trustees, members, and volunteers (“Indemnified Parties”) from any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney’s and Program Managers’ fees and causes of action, including personal injury and/or death (“**Claim(s)**”), but only to the extent that the Claim(s) arises out of, pertains to, or relates to the negligence (active or passive, ordinary or gross), recklessness (ordinary or gross), errors or omissions, or willful misconduct of Program Manager, its directors, officials, officers, employees, contractors, subcontractors, Program Managers, sub-Program Managers, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. This indemnity excludes Program Manager’s liability as to the active or sole negligence or willful misconduct of the District.
- 8.2. Program Manager shall defend and pay all costs, expenses and fees to defend the Indemnified Parties, from any and all Claim(s), to the extent that the Claim(s) arises out of, pertains to, or relates to the alleged negligence (active or passive, ordinary or gross), recklessness (ordinary or gross), errors or omissions, or willful misconduct of Program Manager, its directors, officials, officers, employees, contractors, subcontractors, Program Managers, sub-Program Managers, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. District shall have the right, within reason, to accept or reject any legal representation that Program Manager proposes to defend the Indemnified Parties.

## **Article 9. Responsibilities of the District**

- 9.1. The District shall examine the documents submitted by the Program Manager and shall render decisions so as to avoid unreasonable delay in the process of the Program Manager’s services.
- 9.2. The District shall, in a timely manner, and with Program Manager’s assistance, secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, subject to Program Manager’s and/or the design professional(s) duties to recommend or provide same.

## **Article 10. Liability of District**

- 10.1. Other than as provided in this Agreement, District’s 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.
- 10.2. Any and all costs incurred by District, or for which District may become liable, to the extent caused by negligent delays of Program Manager in its performance hereunder, shall be paid to District by Program Manager as provided for herein and/or under California law.
- 10.3. District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Program Manager, or by its employees, even though

such equipment be furnished or loaned to Program Manager by District.

- 10.4. The Program Manager hereby waives any and all claim(s) for recovery from the District under this Agreement, which loss or damage is covered by valid and collectible insurance policies. Program Manager agrees to have its required insurance policies endorsed to prevent the invalidation of insurance coverage by reason of this waiver. This waiver shall extend to claims paid, or expenses incurred, by Program Manager's insurance company on behalf of the District.

#### **Article 11. Insurance**

- 11.1. Program Manager shall procure prior to commencement of the work of this Agreement and maintain for the duration of the Agreement the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Program Manager, their agents, representatives, employees and Program Manager(s).
- 11.2. **Minimum Scope and limits of Insurance:** Coverage shall be at least as broad as the following scopes and limits and shall be an occurrence-based basis unless otherwise indicated:
- 11.2.1. **Commercial General Liability.** Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- 11.2.2. **Commercial Automobile Liability, Any Auto.** Two million dollars (\$2,000,000) per accident for bodily injury and property damage.
- 11.2.3. **Workers' Compensation Liability.** For all Program Manager's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Program Manager shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide employers' liability coverage with minimum liability coverage of one million dollars (\$1,000,000) per accident for bodily injury or disease. Program Manager shall provide an endorsement that the insurer waives the right of subrogation against District and its respective elected officials, officers, employees, agents, representatives, Program Managers, trustees, and volunteers.
- 11.2.4. **Employment Practices Liability.** For all of the Program Manager's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Program Manager shall keep in full force and effect, an Employment Practices Liability policy. That policy shall provide employers' liability coverage with minimum liability coverage of one million dollars (\$1,000,000) per occurrence. The Program Manager shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, Program Managers, trustees, and volunteers.
- 11.2.5. **Sexual Molestation and Abuse Liability Insurance.** Two million dollars (\$2,000,000) per incident. Program Manager shall procure and maintain, during the life of this Agreement, sexual molestation and abuse insurance. Program Manager shall require its Program Managers to procure and maintain sexual molestation and abuse insurance for all employees of Program Managers. Any class of employee or employees not covered by a Program Manager's insurance shall be covered by Program Manager's insurance. If any class of employee or employees engaged in Services under the Agreement, on or at

the Site of the Project, are not covered under the sexual molestation and abuse insurance, Program Manager shall provide, or shall cause a Program Manager to provide, adequate insurance coverage to cover any employee(s) not otherwise covered before any of those employee(s) commence work.

- 11.2.6. **Professional Liability.** This insurance shall cover the Program Manager’s liability arising from the services of Program Manager with a minimum of one million dollars (\$1,000,000) per claim limit and two million dollars (\$2,000,000) aggregate limit, and subject to no more than **twenty-five thousand dollars (\$25,000) per claim deductible**, coverage to continue through completion of construction plus “tail” coverage for two (2) years thereafter. This policy can be on a claims-made basis.
- 11.3. The District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.
- 11.4. **Deductibles and Self-Insured Retention:** Any deductibles or self-insured retention exceeding \$25,000 must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers; or the Program Manager shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 11.5. **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
- 11.5.1. The District, the Program Manager, their representatives, Program Managers, trustees, officers, officials, employees, agents, and volunteers (“Additional Insureds”) are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Program Manager; instruments of service and completed operations of the Program Manager; premises owned, occupied or used by the Program Manager; or automobiles owned, leased, hired or borrowed by the Program Manager. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.
- 11.5.2. For any claims related to this project, the Program Manager’s insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Program Manager’s insurance and shall not contribute with it.
- 11.5.3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.
- 11.5.4. The Program Manager’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.
- 11.5.5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

- 11.6. **Acceptability of Insurers.** Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A:VII. Program Manager shall inform District in writing if any of its insurer(s) have an A.M. Best's rating less than A:VII. At the option of District, either:
- 11.6.1. District can accept the lower rating;
  - 11.6.2. Require Program Manager to procure insurance from another insurer.
- 11.7. **Verification of Coverage:** Program Manager shall furnish the District with:
- 11.7.1. Certificates of insurance showing maintenance of the required insurance coverage;
  - 11.7.2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before Services commence.

**Article 12. Nondiscrimination**

Program Manager agrees that no discrimination shall be made in the employment of persons under this Agreement because of the 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 of such person. Program Manager shall comply with any and all regulations and laws governing nondiscrimination in employment.

**Article 13. Covenant Against Contingent Fees**

Program Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Program Manager, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Program Manager, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage fee, gift, or contingency.

**Article 14. Entire Agreement/Modification**

This Agreement, including the Exhibits hereto, supersedes all previous contracts and constitutes the entire understanding of the parties hereto. Program Manager shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both Parties. Program Manager specifically acknowledges that in entering this Agreement, Program Manager relies solely upon the provisions contained in this Agreement and no others.

**Article 15. Non-Assignment of Agreement**

In as much as this Agreement is intended to secure the specialized services of the Program Manager, Program Manager may not assign, transfer, delegate or sublet any interest therein without the prior written consent of District and any such assignment, transfer, delegation or sublease without the District's prior written consent shall be considered null and void. Likewise,



District may not assign, transfer, delegate or sublet any interest therein without the prior written consent of Program Manager and any such assignment, transfer, delegation or sublease without Program Manager's prior written consent shall be considered null and void.

**Article 16. Law, Venue**

- 16.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.
- 16.2. The county in which the District administration office is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

**Article 17. Alternative Dispute Resolution**

If all claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. If this method proves unsuccessful, then all claims, disputes or controversies as stated above may be decided through arbitration, if agreed to by all Parties. Program Manager shall not rescind or stop the performance of its Services pending the outcome of any dispute.

**Article 18. Severability**

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**Article 19. Employment Status**

- 19.1. Program Manager shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which the Program Manager performs the services which are the subject matter of this Agreement; provided always, however, that the services to be provided by Program Manager shall be provided in a manner consistent with all applicable standards and regulations governing such services.
- 19.2. Program Manager understands and agrees that the Program Manager's personnel are not and will not be eligible for membership in or any benefits from any District group plan for hospital, surgical or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a District employee.
- 19.3. Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Program Manager is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Program Manager which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.

- 19.4. Should a relevant taxing authority determine a liability for past services performed by Program Manager for District, upon notification of such fact by District, Program Manager shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Program Manager under this Agreement (and offsetting any amounts already paid by Program Manager which can be applied as a credit against such liability).
- 19.5. A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Program Manager shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Program Manager is an employee for any other purpose, then Program Manager agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Program Manager was not an employee.
- 19.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

**Article 20. Warranty of Program Manager**

- 20.1. Program Manager warrants that the Program Manager is properly licensed and/or certified under the laws and regulations of the State of California to provide all the services that it has herein agreed to perform.
- 20.2. Program Manager certifies that it is aware of the provisions of the Labor Code of the State of California, that 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 it certifies that it will comply with those provisions before commencing the performance of the work of this Agreement.

**Article 21. Cost Disclosure - Documents and Written Reports**

Program Manager shall be responsible for compliance with California Government Code section 7550, if the total cost of the Agreement is over Five Thousand Dollars (\$5,000).

**Article 22. Communications / Notice**

Notices and communications between the Parties may be sent to the following addresses:

**District:**  
 Hayward Unified School District  
 2441 Amador Street  
 Hayward, CA 94544  
 ATTN: Allan Garde, Assistant  
 Superintendent, Business Services  
[agarde@husd.k12.ca.us](mailto:agarde@husd.k12.ca.us)

**Program Manager:**  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_, CA \_\_\_\_\_  
 Attn: \_\_\_\_\_

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the day after delivery.

## **Article 23. Disabled Veteran Business Enterprise Participation**

Pursuant to section 17076.11 of the Education Code, the District has a participation goal for disabled veteran business enterprises (DVBEs) of at least three percent (3%), per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the Act). This Project may use funds allocated under the Act. Therefore, to the extent feasible and pertaining to future hirings, the Program Manager, before it executes the Agreement, shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBEs in conjunction with the Agreement, and documentation demonstrating the Program Manager's good faith efforts to meet these DVBE goals.

## **Article 24. Other Provisions**

- 24.1. Neither the District's review, approval of, nor payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Program Manager shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Program Manager's failure to perform any of the services furnished under this Agreement to the standard of care of the Program Manager for its Services, which shall be, at a minimum, the standard of care of Program Managers performing similar work for California school districts at or around the same time and in or around the same geographic area of the District.
- 24.2. Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.
- 24.3. The Program Manager acknowledges that the District is a public agency that is subject to heightened curiosity by the news media and the public and that the Program Manager may not be apprised of all facts surrounding the Project that Program Manager is working on. Accordingly, Program Manager shall promptly refer all inquiries from the news media or public concerning this Agreement or its performance under the Agreement to the District, and Program Manager shall not make any statements or disclose any documents to the media or the public relating to the performance under this Agreement or the effects caused thereby. If Program Manager receives a complaint from a citizen or member of the public concerning the performance or effects of this Agreement, it shall promptly inform the District of that complaint. In its sole discretion, the District shall determine the appropriate response to the complaint.
- 24.4. Program Manager represents that the Program Manager has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of the Services and that no person having any such interest shall be employed by Program Manager.
- 24.5. Program Manager, and its Managers, and employee(s) shall maintain the confidentiality of all information received in the course of performing the Services. Program Manager understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

24.6. Exhibits. Any and all exhibits attached hereto are hereby incorporated by this reference and made a part of this Agreement.

24.7. **Fingerprinting/Certification.**

24.7.1. Unless the District has determined pursuant to Education Code section 45125.2 that on the basis of scope of work in this Agreement that Program Manager and its subcontractors and employees will have only limited contact with pupils, the Program Manager shall comply with the provisions of Education Code section 45125.01 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Program Manager shall not permit any employee to have any contact with District pupils until such time as the Program Manager has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Program Manager's responsibility shall extend to all employees, agents, and employees or agents of its subcontracts regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Program Manager.

24.7.2. Verification of compliance with this section and the Criminal Background Investigation Certification shall be provided in writing to the District prior to each individual's commencement of employment or participation on the Project and prior to permitting contact with any student.

24.8. No drugs, alcohol and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, or contractors are to use drugs on these sites.

24.9. Unacceptable and/or loud language will not be tolerated. "Cat calls" or other derogatory language toward students or public will not be allowed.

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

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

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

Hayward Unified School District

\_\_\_\_\_ [Program Manager]

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

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

Allan Garde  
Assistant Superintendent, Business Services

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

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

EXHIBIT A

SCOPE OF SERVICES

**[THIS IS SAMPLE SCOPE ONLY. THE REQUIRED SCOPE OF SERVICES MUST BE REVIEWED AND APPROVED BY THE PROGRAM MANAGER AND THE DISTRICT.]**

Program Manager shall provide all services necessary for completing the following:

1. **Project List.** Assist and advise the District in prioritizing, structuring and sequencing the Projects in the Program in the form of a master Project list, which shall include:
  - 1.1. Preliminary Project programming & scoping
  - 1.2. Community Engagement (town hall meetings, site meetings, etc.)
  - 1.3. Master priorities development
  - 1.4. General Program strategies
  - 1.5. Recommendations on assignment of like scope to similar Projects
  - 1.6. Recommendations on organizing Projects to achieve schedule goals
  - 1.7. Recommendations on logical bidding structure based on industry knowledge
  - 1.8. Recommendations on organizing Projects to meet logistics goals (e.g., relocation requirements or restrictions)
  - 1.9. Advise the District regarding project delivery systems and bid packaging strategies.
2. **Schedules.** Prepare and update as required, a master Program schedule incorporating design periods, approval periods, and construction periods for all Projects identified in the Program, and perform the following:
  - 2.1. Monitor and revise, as required, Project schedules relative to overall master Program schedule.
  - 2.2. Include significant milestones on each schedule.
  - 2.3. Provide monthly reports and updates to the District, including schedule projections and analysis.
3. **Budgets.** All budgets must be in accordance with and tied to the District's accounting codes. In addition to the budget requirements indicated in the Agreement itself, Program Manager shall prepare and update as required a Program Budget, Construction Budgets for each Project, and Construction Cost Budgets for each Project, which shall include:
  - 3.1. All anticipated expenditures
  - 3.2. Detailed cash flow projections
  - 3.3. Resource identification (bond funds and other fund sources)
  - 3.4. State matching grant eligibility profile by site
  - 3.5. Individual preliminary Project costs
  - 3.6. Interim housing
  - 3.7. Provide monthly reports and updates to the District.
4. **Contract Management.** Assist the District and its legal counsel in the following:
  - 4.1. The development of District standard contract agreements for use in assigning scope of work for each Project within the Program.
  - 4.2. The assignment of tasks to architectural and engineering firms for each Project, including issuing request for proposals, contract negotiations, preparation of the contract agreement, and assisting the District during the public contract approval process.
  - 4.3. The procurement of required consultants, such as testing and inspection companies and Division of State Architect project inspectors, to support the Projects, including issuing request for proposals, contract negotiations, preparation of the contract agreement, and assisting the District during the public contract approval process.
  - 4.4. The review contracting strategies with District for each Project to mitigate impacts, costs and delays, and to maximize competition.
  - 4.5. The preparation of the "front end" documents, including Divisions 0 and 1, supplemental

conditions and a pre-bid construction schedule. Coordinate the incorporation of Divisions Sections 2 – 49 into specifications as provided by designers (see below).

5. **Cost-Savings.** Identify potential cost-saving approaches to construction such as phasing and grouping of Projects.
6. **Cooperation.** Cooperate with other professionals employed by the District for the design, coordination or management of other work related to the Projects, including the persons or state agencies responsible for operation of a labor compliance program, if applicable.
7. **Environmental.** Provide direction and planning to ensure all Projects comply with applicable environmental requirements such as those emanating from the Environmental Protection Agency (EPA), Cal/EPA, the California Environmental Quality Act (“CEQA”), Air Quality Management District and State of California and Regional Water Quality Control Board laws, regulations and rules.
8. **Contract Documents.** Assist the District in reviewing and revising bid documents, general requirements, Division 1 documents, technical specifications, lease-leaseback documents, and other related forms.
9. **Meetings.**
  - 9.1. Chair, conduct and take minutes of periodic meetings between District and its design professional(s). Program Manager shall keep meeting minutes to document comments generated in these meetings, but shall not be responsible for analyzing design issues raised in said meetings.
  - 9.2. Attend each meeting of the District’s Board of Education, and to provide updates at each meeting.
  - 9.3. Attend District property committee meetings, site committee meetings, Citizen Bond Oversight Committee meetings, planning workshops, or other Project-related meetings within the community.
10. **Professional Responsibility.** Be responsible for the professional quality and technical accuracy of all cost estimates, constructability reviews, studies, reports, projections, opinions of the probable cost of construction, and other services furnished by Program Manager under this Agreement as well as coordination with all Master Plans, studies, reports and other information provided by District to Program Manager. Program Manager shall, without additional compensation, correct or revise any errors or omissions in the deliverables it generates.
11. **Minutes.** Maintain minutes and a log of all meetings, site visits or discussions held in conjunction with the work of the Program, with documentation of major discussion points, observations, decisions, questions or comments. These shall be furnished to the District and/or its representative for inclusion in the overall Program documentation.
12. **Communication System.** Develop a Management Information System (MIS) to assist in establishing communications between the District, Program Manager, design professional(s), contractor(s) and other parties on each Project. In developing the MIS, the Program Manager shall interview the District’s key personnel and others in order to determine the type of information to be managed and reported, the reporting format, the desired frequency for distribution of the various reports, the degree of accessibility by potential users, and the security protocol for the system. This shall include:
  - 12.1. District-approved procedures, forms, and reporting requirements for the Project.
  - 12.2. A communications procedure for the Project that allows for decision making at appropriate levels of responsibility and accountability.
13. **On-Going Updates.** Monitor and advise the District as to all material developments in each Project. Program Manager shall develop and implement with District approval reporting methods for schedules, cost and budget status, and projections for each Project. The Program Manager shall provide District administration and the Board of Trustees updates of the Program, Projects, and performance of the Program Manager’s Services. Additionally, Program Manager shall be the focal point of all communication between District and its Design Team.
14. **Agency Documentation.** Coordinate transmittal of documents to regulatory agencies for review and shall advise the District of potential problems in completion of such reviews.
15. **Pictures.** Provide documentation, pictures, and other information and assistance to the District for the District’s use on a website for public access to show Project status.
16. **Public Records Act.** Coordinate the reply and response to any California Public Records Act requests received

related to a Project or the Program and coordinating, if directed by the District, with the District's legal counsel.

17. **Overall Assistance.** Provide overall Program Management assistance to the District in its efforts to implement the Program, Projects, agreements, products, procedures, and reporting.
18. **Excluded Services.** Program Manager is not responsible for the following scopes of work or services, but shall assist the District in procuring these scopes of work or services when required and Program Manager shall coordinate and integrate its work with any scopes of work or services provided by District related to the following:
  - 18.1. Ground contamination or hazardous material analysis.
    - 18.1.1. Any asbestos testing, design or abatement.
  - 18.2. Compliance with the CEQA, except that Program Manager shall provide current information for use in CEQA compliance documents.
  - 18.3. Historical significance report.
  - 18.4. Preparing soils investigation.
  - 18.5. Preparing geotechnical hazard report.
  - 18.6. Preparing topographic survey, including utility locating services.
  - 18.7. Other items specifically designated as the District's responsibilities under this Agreement.
  - 18.8. Preparing as-built documentation from previous construction projects.
19. **OTHER PROGRAM MANAGEMENT SERVICES**
  - 19.1. **Project Design/Programming**
    - 19.1.1. Prepare and attend meetings with District administrative staff and site staff to review Project specific programming and design of each project, at each school site.
    - 19.1.2. Monitor preliminary cost models/estimates from Architects for alignment with the Program Budget, each Construction Budget, and each Construction Cost Budget.
    - 19.1.3. Monitor preliminary Project schedules from Architects relative to overall master schedule.
    - 19.1.4. Coordinate other direct District consultants performing the following services:
      - 19.1.4.1. Surveying
      - 19.1.4.2. Soils/geotechnical
      - 19.1.4.3. CEQA/environmental
      - 19.1.4.4. Hazardous materials inventory, testing and project specifications.
    - 19.1.5. Perform pre-construction services and pre-qualification services for (including surveying, soils/geotechnical, DSA inspectors, testing agencies, CEQA/environmental consultants, etc.), including performance of the following:
      - 19.1.5.1. Coordination with legal counsel
      - 19.1.5.2. Edit pre-qualification documents
      - 19.1.5.3. Distribute pre-qualification documents
      - 19.1.5.4. Conduct reference checks
      - 19.1.5.5. Score all contractors and forward recommendation to District for Board approval.
  - 19.2. **Design Phase Management**
    - 19.2.1. Coordinate and conduct a project kick-off meeting for each project, attended by the designer, District and others, as necessary, to review the scope of work, master schedule, project schedule, budget(s) and the MIS.
    - 19.2.2. Monitor and document the designer's compliance with the scope of work schedule, budget and MIS and coordinate the flow of information between the District, designer and others, as necessary, including meeting minutes and budget and schedule updates.
    - 19.2.3. Conduct periodic meetings attended by District, designer and others for exchange of project information and design progress. Prepare and distribute detailed meeting minutes to the District, designer and others, as necessary.
    - 19.2.4. Review design documents and make recommendations to the District and designer as to scope of work, bid-ability, constructability, scheduling and timing of construction, as to separation of the project into contracts for various categories of the work and for

compliance with the District's Design Standards. The program manager will be responsible to coordinate with the Construction Manager and the design teams. Such review shall be provided to the District and designer in writing.

- 19.2.5. Coordinate and expedite the District's design reviews by compiling and conveying the District's review comments to the designer.
  - 19.2.6. Coordinate the incorporation of the technical specifications (traditionally Divisions 2 – 17) into the contract documents.
  - 19.2.7. Assist the District in determining and managing phasing or temporary housing needs, including move management for each project.
  - 19.2.8. Review estimates of construction cost for each submittal of design drawings and specifications from the designer. Program Manager's review of the estimate for each submittal shall be accompanied by a report to the District and designer identifying variances from the Program Budget, each Construction Budget, and each Construction Cost Budget. The Program Manager shall facilitate decisions by the District and designer when changes to the design are required to remain within the Program Budget, each Construction Budget, and each Construction Cost Budget.
  - 19.2.9. Make recommendations to the District concerning revisions to the project scope and/or the Program Budget, each Construction Budget, and each Construction Cost Budget that may result from design changes and/or market conditions.
  - 19.2.10. Make recommendations on value engineering and to the District and designer on major construction components, including cost evaluations of alternative materials and systems.
- 19.3. **Bid/Solicitation and Award Phase**
- 19.3.1. Assist the District in developing lists of possible bidders or respondents to solicitations, and in prequalifying bidders if prequalification is permitted by the District. This service shall include the following: preparation and distribution of prequalification questionnaires; receiving and analyzing completed questionnaires; interviewing possible bidders or respondents to solicitations, bonding agents and financial institutions; and preparing recommendations for the District. The Program Manager shall prepare a bidders and respondents to solicitations list for each package for approval by District.
  - 19.3.2. Assist the District, designer(s), and Construction Manager conducting a pre-bid or pre-solicitation conference to explain the project requirements to the bidders and respondents to solicitations, including scheduling, cost control, access, interfaces and administrative requirements.
  - 19.3.3. Assist in oversight of bid, RFQ, RFP and/or award activities.
- 19.4. **Construction Phase**
- 19.4.1. Oversee and manage any contracted-for construction manager(s) with the implementation of their contractual duties.
  - 19.4.2. The Program Manager shall develop and implement procedures for the review and processing of applications by contractors for progress and final payments.
- 19.5. **Closeout Phase**
- 19.5.1. Ensure that all designer(s), construction manager(s), project inspector(s), special inspector(s), testing agency(s), contractor(s), and all other consultants and builders on each construction project in the Program completes all necessary tasks for final closeout of that construction project including, without limitation, all DSA verified reports, warranties, guarantees, operations & maintenance manuals, as-built drawings, record drawings, and other documents required under the applicable contracts.
- 19.6. **On-Going Program Management Services**
- 19.6.1. Perform Program master schedule updates as necessary over the course of the Program.
  - 19.6.2. Perform Program master budget updates as necessary over the course of the Program.
  - 19.6.3. Coordinate State agency services, including coordination with the following State agencies:
    - 19.6.3.1. California Department of General Services, Division of the State Architect



- (“DSA”)
    - 19.6.3.2. California Department of Education (“CDE”)
    - 19.6.3.3. California Department of General Services, Office of Public School Construction (“OPSC”)
    - 19.6.3.4. California Department of General Services, State Allocation Board (“SAB”).
  - 19.6.4. Develop, submit and track all OPSC grant applications for the School Facility Program (“SFP”).
  - 19.6.5. Develop, submit and manage grant applications for any possibly eligible State grant or fund.
  - 19.6.6. Coordinate alternate project delivery methods, including but not limited to the following possible alternatives:
    - 19.6.6.1. Multiple prime contracting
    - 19.6.6.2. Lease-lease back contracting.
  - 19.6.7. Customize cost database for all cost tracking.
  - 19.6.8. Perform on-going accounting coordination with District business office staff, including coordination of the following:
    - 19.6.8.1. Invoice processing of all invoices associated with the Program entered through databases and forwarded to District
    - 19.6.8.2. Purchase order requests
    - 19.6.8.3. Cost code coordination with District accounting staff
    - 19.6.8.4. Miscellaneous reporting.
  - 19.6.9. Coordinate Asbestos Hazardous Emergency Response Act (“AHERA”) asbestos management reporting (six month & triennial).
  - 19.6.10. Prepare, attend and manage Regular weekly (or other frequency as specified by the District) Program meetings with District’s Facilities Director. The Program Manager will prepare, at a minimum, the following for the regular Program meetings:
    - 19.6.10.1. Status of projects
    - 19.6.10.2. Status of the Program Budget, each Construction Budget, and each Construction Cost Budget
    - 19.6.10.3. Status of master Program schedule and each Project schedule.
  - 19.6.11. Prepare, attend and manage monthly owners meetings with District’s Superintendent and Board of Trustees subcommittees.
  - 19.6.12. Perform Bond Oversight Committee support, including accounting, reporting, and attending all quarterly meetings.
  - 19.6.13. Provide updates on the status of the Program at monthly Board of Trustees Meetings, and any applicable special meeting of the Board of Trustees.
  - 19.6.14. Coordinate, manage and attend all community engagement meetings and meetings regarding stakeholder input. These meetings include the following:
    - 19.6.14.1. Miscellaneous town hall meetings
    - 19.6.14.2. Design workshop meetings with parent-teacher organizations, Parent Teacher Associations (“PTAs”), school staff, students and other user groups
  - 19.6.15. Receive, manage, send and track all Public Records Requests.
- 19.7. **Program Communications**
  - 19.7.1. Provide content to District’s Facilities Director for Program website.
  - 19.7.2. Provide content to District’s Facilities Director for Program advertising and community information (newsletters, flyers, etc.)
- 19.8. **Project Logistics Services**
  - 19.8.1. Develop classroom relocation maps.
  - 19.8.2. Develop, assist and advise moving/relocation strategies.
  - 19.8.3. Prepare and attend meetings with site administration and teachers for each phase of modernization moving, and present moving instructions and explain move day tactics.
  - 19.8.4. Develop, attend and manage teacher packing orientation and instructions.
  - 19.8.5. Prepare and update moving schedules.

- 19.8.6. Perform moving scope coordination.
- 19.8.7. Coordinate with moving company for pre-move scoping and final pricing adjustments.
- 19.8.8. Perform on-site coordination the day of the moves (weekends, holidays and after hours).

**FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION**

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Independent Program Manager Agreement for Professional Services (“Agreement”):

**[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]** Program Manager’s employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Program Manager’s employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Program Manager for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 (c).)

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

District Representative’s Name and Title: \_\_\_\_\_

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

The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Program Manager’s services under this Agreement and Program Manager certifies its compliance with these provisions as follows: *“Program Manager certifies that the Program Manager has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Program Manager’s employees, subcontractors, agents, and subcontractors’ employees or agents (“Employees”) regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Program Manager, 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 that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto.”*

Program Manager’s services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:

\_\_\_\_\_ The installation of a physical barrier at the worksite to limit contact with pupils.

\_\_\_\_\_ Continual supervision and monitoring of all Program Manager’s on-site employees of Program Manager by an employee of Program Manager, \_\_\_\_\_, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

\_\_\_\_\_ Surveillance of Employees by District personnel. **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]**

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

District Representative’s Name and Title: \_\_\_\_\_

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

**Megan’s Law (Sex Offenders)**. I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California’s “Megan’s Law” Website (<http://www.meganslaw.ca.gov/>).

**[MUST BE COMPLETED BY PROGRAM MANAGER’S AUTHORIZED REPRESENTATIVE.]** I am a representative of the Program Manager 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 Program Manager.

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

Name of Program Manager or Company: \_\_\_\_\_

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

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

**IRAN CONTRACTING ACT CERTIFICATION**  
**(Public Contract Code § 2204)**

Pursuant to Public Contract Code (PCC) section 2204, an Iran Contracting Act certification is required for solicitations of goods or services of one million dollars (\$1,000,000) or more.

Program Manager shall complete **ONLY ONE** of the following three paragraphs.

- 1. Program Manager’s total Fee is less than one million dollars (\$1,000,000).  
**OR**
- 2. Program Manager’s total Fee is one million dollars (\$1,000,000) or more, but Program Manager is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services (“DGS”) pursuant to Public Contract Code § 2203(b), and Program Manager is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.  
**OR**
- 3. Program Manager’s total Fee is one million dollars (\$1,000,000) or more, but the District has given prior written permission to Program Manager to submit a proposal pursuant to PCC 2203(c) or (d). **A copy of the written permission from the District is included with this Agreement.**

I certify that I am duly authorized to legally bind the Program Manager to this certification, that the contents of this certification are true, and that this certification is made under the laws of the State of California.

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

Proper Name of Program Manager: \_\_\_\_\_

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

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

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

**RUSSIAN SANCTIONS CERTIFICATION**

On February 21, 2022, President Biden issued Executive Order 14065 (<https://www.whitehouse.gov/briefing-room/presidential-actions/2022/02/21/executive-order-on-blocking-property-of-certain-persons-and-prohibiting-certain-transactions-with-respect-to-continued-russian-efforts-to-undermine-the-sovereignty-and-territorial-integrity-of-ukraine/>; “**Federal Order**”) imposing economic sanctions and prohibiting many activities including, but not limited to, investing in, importing to, exporting from, and contracting with, areas of Ukraine and in Russia. On March 4, 2022, California Governor Newsom issued Executive Order N-6-22 requiring state agencies to take steps to ensure any agency and entity under contract with state agencies comply with the Federal Order (<https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf>; “**State Order**”).

The District requires the Program Manager, as a vendor with the District, to comply with the economic sanctions imposed in response to Russia’s actions in Ukraine, including the orders and sanctions identified on the U.S. Department of the Treasury website (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>).

If your Firm’s contract with the District has a cumulative value of \$5 million or more, you must also provide a written response to the District, in addition to this certification, indicating:

- (1) that your Firm is in compliance with the required economic sanctions of the Federal and State Orders;
- (2) the steps your Firm has taken in response to Russia's actions in Ukraine, including, but not limited to, desisting from making new investments in, or engaging in financial transactions with, Russian entities, not transferring technology to Russia or Russian entities, and directly providing support to the government and people of Ukraine.

I certify that I am duly authorized to legally bind the Program Manager to this certification, and I certify that the Program Manager is compliant with the Federal Order and the State Order.

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

Proper Name of Program Manager: \_\_\_\_\_

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

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

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

**Form of Agreement for Program Management Services**