

**REQUEST FOR PROPOSALS  
No. 24-B02-01**

For

**BOND COUNSEL SERVICES**

For the

**CUPERTINO UNION SCHOOL DISTRICT**

Request for Proposals Issued: March 8, 2024

Deadline for Submittal of Proposals: March 29, 2024 @ 2:00 p.m.

By: Dana Ino  
Director, Business Operations

## **NOTICE TO BIDDERS**

Request for Proposals  
RFP 24-B02-01  
Bond Counsel Services

NOTICE IS HEREBY GIVEN that the Cupertino Union School District, hereinafter referred to as the District, will receive up to, but not later than 2:00 p.m. on March 29, 2024, sealed proposals for the award of a contract for bond counsel services.

All proposals shall be submitted in the format specified by the District. Proposals shall be addressed Attn: Dana Ino, Director, Business Operations, Cupertino Union School District, and delivered by 2:00 p.m. on March 29, 2024, at the Facility Modernization office (Door 10), 10301 Vista Drive, Cupertino, CA 95014, and shall be labeled "Bond Counsel Services, RFP 24-B02-01."

Any legal firm or partnership who wishes their proposal to be considered is responsible for making certain that their proposal is received in the Purchasing Office by the proper time. No oral, electronic, facsimile, or telephonic proposals or modifications will be considered unless specified. Proposals received after the scheduled Submittal Deadline will be returned unopened.

The receiving time in the Purchasing Office will be the governing time for acceptability of proposals. Proposals will not be accepted by telephone or facsimile machine. Proposals must bear original signatures and figures.

Specifications may be examined and obtained at no charge at the District's Purchasing website: <https://www.cusdk8.org/departments/purchasing/bid-opportunities>.

Dana Ino  
Director, Business Operations

Ad dates: March 8 and March 15, 2024

## **I. BACKGROUND**

The Cupertino Union School District (District) educates more than 13,000 students in the City of Cupertino and portions of five surrounding communities in California's Silicon Valley. The District comprises 18 elementary schools, five middle schools, three lease sites, and the District Offices. Our student population is extremely diverse, coming from families speaking over 40 different languages. The mission of CUSD is to provide a child-centered environment that cultivates character, fosters academic excellence, and embraces diversity. District families, community, and staff join as partners to develop creative, exemplary learners with the skills and enthusiasm to contribute to a constantly changing global society.

The District has a number of aging schools. Although some of the schools have been recently modernized, the school buildings require significant upgrades such as learning environment improvements or building systems major maintenance and/or replacement. In some cases, older buildings, especially portables may require replacement. Accordingly, the District is evaluating its options for financing such construction and modernization work through one or more Proposition 39 General Obligation Bond Measures in the future.

## **II. INTRODUCTION**

The District is seeking the professional general obligation bond counsel services related to calling for an election for the potential passage of a Proposition 39 General Obligation Bond Measure, issuance of General Obligation Bonds, Certificates of Participation, Tax Revenue Anticipation Notes, and other legal services associated with such public finance issues set forth in the Scope of Work below.

## **III. GENERAL INSTRUCTIONS.**

Interested firms are invited to submit one original signed (by authorized representative) bound proposal, two (2) paper copies, and one (1) electronic copy on a flash drive. The response shall be made in the format provided and the complete response together with any and all additional materials, shall be enclosed in a sealed envelope addressed and delivered no later than 2:00 p.m. on March 29, 2024, to the following address:

Dana Ino, Director, Business Operations  
Cupertino Union School District  
10301 Vista Drive, Door #10  
Cupertino, CA 95014

The sealed envelope shall be marked on the outside lower left corner with the words "Bond Counsel Services, RFP 24-B02-01." It is the firm's sole responsibility to ensure that their response is received prior to the scheduled closing time for receipt of Proposals. No corrected or resubmitted Proposals will be accepted after the deadline.

This Request for Proposal (RFP) does not commit the Cupertino Union School District to award a contract or pay any costs incurred in the preparation of a response to this request. The District reserves the right to accept all or part of any responses or to cancel in part or in its entirety this Request for Proposals. The District further reserves the right to accept the response that it considers to be in the best interest of the District.

All requirements must be addressed in your proposal. Nonresponsive proposals will not be considered. All responses, whether selected or rejected, shall become the property of the District.

### **Requests for Information**

Questions related to this RFP must be submitted in writing to Dana Ino, Director, Business Operations, (ino\_dana@cusdk8.org), no later than 2:00 p.m., March 22, 2024. In the subject line, specify "RFP for Bond Counsel Services."

### **Scope of Work**

Firms wishing to be considered for selection must agree to meet the District's requirements and provide any or all services listed below at the specific request of the District, including, but not limited to the following:

1. Provide legal advice and consultation relating to bond election documents and the District's process for considering a bond election.
2. Prepare bond election documents.
3. Provide legal advice, consultation and legal opinions with respect to the authorization and issuance of the bonds and whether the interest paid is tax exempt under federal and/or state laws and regulations.
4. Draft legal documentation (excluding the official statement) including all required resolutions, financing documents, closing documents and transcripts and coordinate the authorization and execution of those documents.
5. Review the official statement prepared by the District's financial advisor.
6. Provide ongoing legal services in matters relating to interpretation of applicable regulations, legislation and/or pending litigation associated with the bond measure as requested.
7. Participate in conference calls, staff meetings and/or Board meetings, as requested, relating to the bonds.
8. Perform due diligence regarding the District and the bonds.

9. Provide ongoing information to District staff regarding the activity and legal status of the bonds.
10. Prepare other legal analyses related to the bonds that may be utilized by the District in its financings as requested.
11. Perform such other functions normally contemplated to be within the scope of a fully qualified bond counsel as requested by District
12. Assist in presenting information to the Board, rating agencies and credit enhancers relating to legal issues affecting the issuance of the bonds

#### **IV. CONTENTS FOR RESPONSES**

In order for responses to be considered, said response must be clear, concise, complete, well organized and demonstrate firm's ability to follow instructions. The quality of answers, not length of responses or visual exhibits, is important. Please note, we are not looking for a large proposal document and brevity will be valued.

The response shall be organized in the format listed below. Respondents shall read each item carefully and answer each of the following items accurately to ensure compliance with District requirements.

##### **Section A. Business Profile: Provide a profile of your company.**

1. Provide firm's name, address, telephone number, fax number and e-mail address.
2. Identify who will be the designated bond counsel for the District and who is authorized to sign agreements and represent your firm in matters related to this Request for Proposals.
3. Describe your firm's bond counsel experience with California schools, with an emphasis on your firm's experience with similar school district bond elections and issuances.
4. Describe briefly the legal services to be provided by your firm as bond counsel.
5. Provide a clear and concise rationale as to why the District should select your firm over other qualified bond counsel firms.
6. References: Provide the names and contact information for at least three (3) California school districts firm has worked with as a bond counsel over the past four (4) years.

##### **Section B. Performance Standards**

1. Describe firm's competence and experience with similar school district bond measures with an emphasis on strengths that set your firm apart.

2. Provide qualifications and depth of experience of specifically assigned and designated personnel who will conduct work for the District (include résumés).
3. As a case study, choose one example of a similar school district which your firm was the bond counsel and provide a brief description of how your firm's services added value to and contributed to the success of the chosen bond measure.

### **Section C. Fees**

Provide your firm's fees for bond counsel services, including, but not limited to pre- and post-election services. Further, identify fees and hourly rates, if any, for additional services the District might require for issues not directly related to the issuance of a bonds. If there are to be charges for reimbursable expenses, please list all charges to be considered reimbursable and provide a not-to-exceed amount for said expenses. The District may consider an hourly rate rather than a contingency fee. Please provide the hourly rates for your team.

### **Section D. Insurance**

Please provide a written description of the level of malpractice insurance carried by your firm, including the deductible amount, to cover errors and omissions, improper judgments or negligence.

### **Section E. Legal Issues**

Please respond to each of the following questions:

1. Is there now pending any legal action relating to or connected with an offering the provision of bond counsel services against the firm or any employee of the firm? if so, please describe such pending action.
2. Have there been any settlements or judgments involving such actions within the last five (5) years? Please describe each such settlement or judgment, including the nature of the action and the amount of recovery.
3. Describe any existing or potential conflict of interest arising from your relationships with or representation of other parties that should be considered as a factor in determining your objectivity, and provide sufficient facts, legal implications, and possible effects in order for the District to appreciate the significance of each potential conflict and grant an appropriate waiver, if necessary.
4. Describe and state the conclusion reached of any disciplinary action, administrative proceeding, malpractice claim or other like proceedings against your firm or any of its lawyers, whether current or pending, as well as any such action, proceeding or claim occurring during the past five years.

## **V. EVALUATION CRITERIA**

A District selection committee will select and rank in the order of qualifications, experience, fees, and overall responsiveness the proposals that meet the criteria set forth in this Request for Proposals and are most advantageous to the District.

The committee may choose to interview any, all, or none of the respondents as may be in the best interest of the District. If interviews are held, a committee representative will notify those firms selected as to place, time, date, and location of the interview. Your firm's main point of contact as stated in your response to this Request for Proposals must be present at the interview.

The names of all firms submitting proposals and the name of the firm selected will be made available upon request. All firms shall be notified of the results in writing after the conclusion of the selection process.

## **V. CONFLICT OF INTEREST**

Respondent shall certify that no official or employee of the District, nor any business entity in which an official of the District has an interest, has been employed or retained to solicit or assist in the procuring of the resulting contract, nor that any such person will be employed in the performance of any contract without immediate divulgence of this fact to the District.

## **VI. INDEMNIFICATION**

Each of the parties shall be solely liable for negligent or wrongful acts or omissions of its representatives, agents or employees occurring in the performance of this Agreement.

If either party becomes liable for damages caused by its representatives, agents or employees, it shall pay such damages without contribution by the other party. Attorney's obligation under the provisions of this paragraph is not limited to, or restricted by, any requirement in this Agreement for Attorney to have insurance.

To the extent permitted by law, District shall defend, indemnify, and hold harmless Attorney, and the agents, officers and employees of Attorney, from claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney fees arising out of, or resulting from, the gross negligence or wrongful acts of District, its officers, or employees.

To the extent permitted by law, Attorney shall defend, indemnify, and hold harmless District, and its agents, officers and employees, from claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney fees arising out of, or resulting from, the gross negligence or wrongful acts of Attorney, its agents, officers, or employees.

It is understood and agreed that Attorney shall be liable for any acts or omissions which occur outside the course or scope of performance of this Agreement and shall defend, indemnify and hold harmless District, its agents, officers, representatives and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney fees, arising from the active negligence or wrongful act of Attorney which is outside the course or scope of the performance of this Agreement.

## VII. INSURANCE

The selected respondent will be required to provide insurance coverage in the amounts as noted below:

Type of Coverage	Minimum Requirement
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	  \$ 2,000,000 \$ 4,000,000
<b>Automobile Liability Insurance - Any Auto</b> Each Occurrence General Aggregate	 \$ 1,000,000 \$ 1,000,000
<b>Workers' Compensation</b>	Statutory Limits
<b>Sexual Abuse/Molestation</b> Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
<b>Employers' Liability</b>	\$ 1,000,000

## VIII. FINAL DETERMINATION AND AWARD

The District is not obligated to explain any deficiencies in responses, nor accept requests for justification from firms not selected for an interview. The District reserves the right to contract with any entity responding to this RFP as described above for all or portions of the above described Project, to reject any response as nonresponsive, and not to contract with any firm for the services described herein. The District makes no representation that participation in the RFP process will lead to selection for participation in an interview, an award of contract or any consideration whatsoever. The award of a contract is at the sole discretion of the District, acting through its Board. The District reserves the right to seek proposals from or to contract with any firm not participating in this process. The District shall in no event be responsible for the cost of preparing any proposal in response to this RFP. The selected entity(ies), if any, will be required to sign an



agreement based on the District's form of agreement for independent consulting services attached hereto as Appendix A.

**IX. ASSIGNMENT**

Any contract resulting from this RFP and any amendments or supplements thereto shall not be assignable by the successful firm either voluntarily or by operation of law without the written approval of the District.

**X. RFP RESPONSE SCHEDULE SUMMARY**

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

<b>DATE</b>	<b>EVENT</b>	<b>TIME DEADLINE</b>
March 8, 2024	Release of RFP	
March 22, 2024	Last day for questions	2:00 p.m.
March 29, 2024	Deadline for all submissions to RFP	2:00 p.m.
April 1-4, 2024	Interviews of firms (optional)	
April 5, 2024	Notification to selected firm	

*We thank you for your interest.*

**APPENDIX A: SAMPLE CONTRACT**

**INDEPENDENT CONTRACTOR AGREEMENT  
FOR SPECIAL SERVICES  
Contract #**

This Independent Contractor Agreement for Special Services ("Agreement") is made as of \_\_\_\_\_, between the Cupertino Union School District ("District") and \_\_\_\_\_ ("Consultant") (together, "Parties").

1. **Services.** The Consultant shall furnish to the District the services as described in Exhibit "A" attached hereto and incorporated herein by this reference ("Services" or "Work").
2. **Term.** The term of this Contract shall be for a period of \_\_\_\_\_ beginning in \_\_\_\_\_ through \_\_\_\_\_ (estimated time period).
3. **Submittal of Documents.** The 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
- \_\_\_\_\_ Workers' Compensation Certificate (if necessary)
- \_\_\_\_\_ Criminal Background Investigation Certification (if necessary)
- \_\_\_\_\_ Insurance Certificates and Endorsements
- \_\_\_\_\_ W-9 Form (if not on file at CUSD)
- \_\_\_\_\_ \_\_\_\_\_

4. **Compensation.** District compensation to the Consultant shall be as set forth in Exhibit "B" as the proposed fee for services, but in no event shall total fees, costs, and expenses exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), without the express approval of the Board.
5. **Taxes.** The Consultant shall pay all federal, state and local taxes, levies, duties and assessments of every nature due in connection with any work under the contract and shall indemnify and hold harmless the District from any liability on account of any and all such taxes, levies, duties, assessments and deductions. Consultant's proposal prices shall include allowance for said taxes.
6. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing services for District, other than as provided in Exhibit "B."
7. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that he/she

and all of his/her 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. **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.
9. **Standard of Care.** Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession for services to California school districts.
10. **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.
11. **Copyright/Trademark/Patent.** Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all 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. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
12. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.

## 13. Termination.

- 13.1. **Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement with thirty (30) days' written notice, 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. In the event that District terminates this Agreement pursuant to this section, District shall compensate Consultant for work completed to date as a pro-rata amount of the full fees, costs, and expenses.
- 13.2. **Without Cause by Consultant.** Consultant may, upon thirty (30) days' notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Consultant for services satisfactorily rendered to the date of termination. Written notice by Consultant shall be sufficient to stop further performance of services to District. Consultant acknowledges that this thirty (30) day notice period is acceptable so that the District can attempt to procure the Services from another source.
- 13.3. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
- 13.3.1. material violation of this Agreement by the Consultant; or
  - 13.3.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or
  - 13.3.3. 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 costs to the District exceeds the cost of providing the service 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.

12.4 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.

**14. Indemnification.** To the furthest extent permitted by California law, Consultant shall, at its sole expense, defend, indemnify, and hold harmless the District, the State of California, and their agents, representatives, officers, consultants, employees, trustees, and volunteers (the “indemnified parties”) from any and all demands, losses, liabilities, claims, suits, and actions (the “claims”) of any kind, nature, and description, including, but not limited to, personal injury, death, property damage, and consultants and/or attorneys fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Agreement or from any activity, work, or thing done, permitted, or suffered by the Consultant under or in conjunction with this Agreement, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. The District shall have the right to accept or reject any legal representation that Consultant proposes to defend the indemnified parties.

**15. Insurance.**

15.1. The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance:

15.1.1. **General Liability.** Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage in the form of Comprehensive General Liability and Contractual Liability. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each project/location or the general aggregate limit shall be twice the required occurrence limit.

15.1.2. **Automobile Liability Insurance.** One Million (\$1,000,000) per accident for bodily and property damage Automobile Liability Insurance, Occurrence Form, that shall protect the Consultant the District from all claims of bodily injury, property damage, personal injury, death, and medical payments arising performing any portion of the Services by Consultant.

15.1.3. **Workers’ Compensation and Employers’ Liability Insurance.** For all of the Consultant’s employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Consultant 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. Contractor shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

15.1.4. **Sexual Abuse/Molestation.** (May be included under General Liability.) One Million Dollars (\$1,000,000) per occurrence; two million (\$2,000,000) minimum general aggregate.

15.1.5. **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

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

15.1.5.2. For any claims related to the projects, the Consultant’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 Consultant’s insurance and shall not contribute with it.

15.1.5.3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

15.1.6. The Consultant’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

15.1.7. 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.

15.1.8. Consultant shall furnish the District with Certificates of insurance showing maintenance of the required insurance coverage and 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 Work commence.

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

16. **Assignment.** The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant.
17. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the District's Board of Education and all federal, state, and local laws, ordinances, regulations and health orders. 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 Agreement is at variance with any such laws, ordinances, 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. Agreement shall be appropriately amended in writing or terminated effective upon Consultant's receipt of a written termination notice from the District. If Contractor 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.
18. **Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this agreement.
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, security, and driving on school grounds, particularly when children are present.
20. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
21. **Antidiscrimination.** 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, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735.
22. **Fingerprinting of Employees.** It is not contemplated at the time of execution of this Agreement that Consultant or its employees will have contact with students during the provision of services under this Agreement. If, at a future time, Consultant will have contact with any pupils, Consultant shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Consultant shall not permit any employee to have any contact with District pupils until such time as the Consultant 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 Consultant's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant. Verification of compliance with this section and the Criminal Background Investigation Certification that may be required with this Agreement, shall be provided in writing to the District prior to each individual's commencement of employment or performing any portion of the Services and prior to permitting contact with any student.

**23. 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:

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

**24. 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.

**25. 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.

**26. 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, addressed as follows:

**District:**  
**Cupertino Union School District**  
10301 Vista Drive  
Cupertino, CA 95014  
FAX: (408) 865-0326  
ATTN: Dana Ino

**Consultant:**  
[NAME] \_\_\_\_\_  
\_\_\_\_\_, CA \_\_\_\_  
[FAX]: \_\_\_\_\_  
ATTN: \_\_\_\_\_



Any notice personally given or sent by facsimile transmission 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.

27. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
28. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
29. **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. This agreement is not valid until approved/ratified by Cupertino Union School District Board of Education. Services shall not be rendered until Agreement is approved.

If a conflict exists between the Terms and Conditions of this Agreement and the incorporated version of Consultant's Proposal, this Agreement shall control over the Proposal. In case of ambiguity, conflict, or lack of information, the District will furnish clarifications with reasonable promptness. The decision of the District in the matter shall be final.

30. **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 Santa Clara County, California.
31. **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.
32. **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.
33. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

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

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**Cupertino Union School District**

**[Consultant]**

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

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

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

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

Print Title: Director, Business Operations

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

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

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

Print Title: Chief Business Officer

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**Information regarding Consultant:**

License No.: \_\_\_\_\_

\_\_\_\_\_:

Address: \_\_\_\_\_

Employer Identification and/or  
Social Security Number

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Type of Business Entity:

\_\_\_\_ Individual

\_\_\_\_ Sole Proprietorship

\_\_\_\_ Partnership

\_\_\_\_ Limited Partnership

\_\_\_\_ Corporation, State: \_\_\_\_\_

\_\_\_\_ Limited Liability Company

\_\_\_\_ Other: \_\_\_\_\_

**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, the District requires the Consultant to furnish the information requested in this section.**

**WORKERS' COMPENSATION CERTIFICATION**

Labor Code Section 3700 in relevant part provides:

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

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

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

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

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

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

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

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

**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 Consultant Agreement for Professional Services (“Agreement”):

- Consultant’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 Consultant’s employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Consultant 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: \_\_\_\_\_

District Representative’s Signature: \_\_\_\_\_

- The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Consultant’s services under this Agreement and Consultant certifies its compliance with these provisions as follows: *“Consultant certifies that the Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Consultant’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 Consultant, 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.”*

- Consultant’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 Consultant’s on-site employees of Consultant by an employee of Consultant, \_\_\_\_\_, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

- Surveillance of Employees by District personnel.

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

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

District Representative’s Signature: \_\_\_\_\_

I am a representative of the Consultant 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 Consultant.

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

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

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

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

**Exhibit "A"**

*Consultant's entire Proposal, if included, is not made part of this Agreement. Consultant's Proposal is made part of this Agreement for scope of services and billing rates only, as prepared for Cupertino Union School District.*