

**Oakland Unified School District
Department of Facilities Planning and Management
955 High Street Oakland CA 94601**

REQUEST FOR QUALIFICATIONS AND PROPOSALS (RFQ/P)

**Material Testing and Special Inspection Services
at Oakland Technical High School
4351 Broadway, Oakland, CA 94611
Project No. 24112
and Castlemont High School
8601 MacArthur Boulevard, Oakland, CA 94606
Project No. 24113**

March 20, 2024 (Issued)

Responses must be received April 9, 2024, no later than 2:00 p.m.

The Oakland Unified School District ("District") is requesting fee proposals from the District's pre-qualified pool of firms ("Consultants") to provide material testing and special inspection services associated with the Pad Mounted Battery Storage System ("Project") at Oakland Technical High School and Castlemont High School.

Interested firms are invited to submit a Statement of Qualifications ("SOQ") and a detailed Fee Proposal (collectively "RFQ/P Packet") as described below of the requested materials with a cover letter addressed to:

Oakland Unified School District
Kenya Chatman, Executive Director of Facilities
Department of Facilities Planning and Management
955 High Street, Oakland, CA 94601

Oral, telegraphic, facsimile, or telephone RFP Packets will not be accepted. RFP Packets received after this date and time will not be accepted. The District reserves the right to waive any informalities or irregularities in the RFP Packets. The District also reserves the right to reject any and all RFP Packets and to negotiate contract terms with one or more Respondents.

The District will only accept electronic Proposals sent via email in lieu of hard copies. Proposals received by the District no later than 2:00 p.m. (Pacific Time) on April 9, 2024 via email will be accepted (to Juanita Hunter at juanita.hunter@ousd.org and the contacts below).

If you have any questions regarding this RFP and/or submitting proposal electronically, please email Kenya Chatman, Executive Director of Facilities at kenya.chatman@ousd.org and cc: to Colland Jang at colland.jang@ousd.org.

LOCAL, SMALL LOCAL AND SMALL LOCAL RESIDENT BUSINESS ENTERPRISE PROGRAM

District Modification: Based on the availability analysis conducted for the Material Testing and Special Inspections, the District had waived its mandatory Local Business Utilization Policy requirement for LBE/SLBE/SLRBE certifications.

FULL OPPORTUNITY

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

SCHEDULE OF ACTIVITIES

Listed below is the “Schedule of Activities” which outlines pertinent dates of which firms responding to this solicitation should make themselves aware.

DATE	ACTIVITY
March 20, 2024	RFQ/P Issued
March 28, 2024	Written requests for interpretation, corrections or modifications are due by 4:00 p.m. (Pacific Time)
April 4, 2024	District will provide written responses to requests for clarification
April 9, 2024	Proposals Due by 2:00 p.m. (Pacific Time)
May 22, 2024	Board Meeting – tentative approval of Contract
May 23, 2024	Tentative Notice to Proceed issued to Consultant

REQUEST FOR FEE PROPOSAL

The Oakland Unified School District ("District") is requesting a fee proposal from the Material Testing and Special Inspections firms to provide services associated with the Pad Mounted Battery Storage System ("Project") at Oakland Technical High School and Castlemont High School ("Project").

A. TENTATIVE PROJECT SCHEDULES AND ESTIMATED COSTS:

OAKLAND TECHNICAL HIGH SCHOOL

REGULATORY AGENCY REVIEWS AND APPROVALS:

1. DSA Application #01-121370
2. Estimated Cost: \$1,306,830
3. DSA Submittal Status: Intake complete as of December 22, 2023
4. DSA Required Review Services: Structural Safety, Fire & Life Safety, and Field Review (note: ACS review exempt confirmed)
5. DSA Approved Date: TBD

CASTLEMONT HIGH SCHOOL

REGULATORY AGENCY REVIEWS AND APPROVALS:

6. DSA Application #01-121371
7. Estimated Cost: \$1,328,713
8. DSA Submittal Status: Intake complete as of December 22, 2023
9. DSA Required Review Services: Structural Safety, Fire & Life Safety, and Field Review (note: ACS review exempt confirmed)
10. DSA Approved Date: TBD

B. PROJECT DESCRIPTION:

The Project scope involves the Installation of a pad mounted battery energy storage system consisting of a Tesla Megapack 2XL (450KVA), mini power station, outlets, and fence equipment enclose.

Under a Generating Facility Interconnection Agreement (for Multiple Tariff NEM2MT) between OUSD ("Producer") and Pacific Gas and Electric Company ("PG&E"), the agreement provides for the Producer to interconnect and operate a generating facility in parallel with PG&E's electric system to serve the electrical loads at Oakland High School. Per the agreement, the generating facility must be a combination of generators, but must include at one NEM2 "eligible customer-generator" (as defined in PG&E's Schedule NEM2).

The Agreement provides for the Producer to operate the eligible generator(s) pursuant to the provisions of Section 2827.1 et seq. of the PU Code and the applicable PG&E tariffs for net energy metering.

The description of the generating facility, including a summary of its significant components and a single-line diagram showing the general arrangement of how the Producer's generating facility and loads are interconnected with PG&E's electric system can be found in the Reference Documents link.

C. REFERENCE DOCUMENTS:

The Project schedules, Project drawings and DSA 103-22 prepared for DSA submissions can be found at the following link:

<https://drive.google.com/drive/folders/0ABCbUW3FhT3wUk9PVA>

Access will be granted upon request.

E. BASIC SERVICES:

The Consultant agrees to provide the Services described below:

1. The Consultant shall be responsible for the professional quality and technical accuracy of all reports and other services furnished by the Consultant under the Agreement as well as design and existing conditions coordination. The Consultant shall, without additional compensation, correct or revise any errors or omissions in its reports and other services.
2. **Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of, or relates in any way to the Services provided under this Agreement, upon the District's request, the Consultant, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Consultant's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation ("Mandatory Assistance").

F. STATEMENT OF WORK:

The Construction Documents contains the following as the Scope of Work:

1. Construction of Tesla Megapack 2XL (450KVA, mini power station, outlets & fence equipment enclose.
2. Certification of this Project is dependent on the end of life report provided during construction as is indicated on DSA 103 that includes the following items:
 - a. Welding Material;
 - b. Bolt Type, ASTM & Grade
 - c. Material ASTM & Grade for the main structural member of the BESS enclosure.

The Construction Documents contains the following on Building Information:

1. Construction Type: Type II-B (Unprotected Non-combustible)
2. Occupancy Type: Group H (High Hazard Group H)
3. APN #13-1106-1 (Oakland Technical High School)
4. APN #43-4617-5-2 and #43-4619-1-1 (Castlemont High School)

The District will be retaining the services of a Project Inspector ("PI") under a separate agreement. The PI's scope of services shall be to provide all PI inspections required by DSA 103-22 for the Project.

G. DUTIES OF THE LABORATORY OF RECORD AND SPECIAL INSPECTORS:

1. DSA 103-22: Listing of Structural Tests & Special Inspections 2022 CBC:

In accordance with latest DSA PR 13-01, the duties of the Material Testing and Special Inspections Company shall be related to but not limited to the use of form DSA 152 and DSA 152-IPI.

DSA 103-22: Listing of Structural Tests & Special Inspections 2022 CBC:
Refer to the DSA 103-22s for the list of structural tests and special inspections to be submitted for the Project at the following link:

<https://drive.google.com/drive/folders/0ABCbUW3FhT3wUk9PVA>

Access will be granted upon request.

Inspectors must have relevant qualifications for the type of testing or inspection they perform. Testing Laboratory personnel shall be certified by ICBO for the type of work they are performing and shall be accepted by DSA prior to performance of any work on or off the project site. The laboratory must have been in operation for a minimum of five (5) years within the State of California.

2. Duties of the Laboratory of Record related to the use of form DSA 152 and DSA 152-IPI are as follows (per DSA PR 13-01):

- Meet with the project inspector, in-plant inspector (when applicable), design professionals, and the contractor as needed to mutually communicate and understand the structural/material and fire/life safety testing and inspection program, and the methods of communication appropriate for the project.
- Obtain a copy of the DSA-approved construction documents from the design professional in general responsible charge prior to the commencement of construction.
- Obtain a copy of the DSA-approved List of Required Structural Tests and Special Inspections (form DSA-103) from the design professional in general responsible charge prior to the commencement of construction.
- Report all project-related activities to the project inspector. The project inspector is responsible for monitoring the work of the Laboratory of Record and special inspectors to ensure the testing and special inspection program is satisfactorily completed. Coordinate with the project inspector to develop a schedule, based on the construction schedule, to complete the testing and special inspection program.
- Provide material testing as identified in the DSA-approved construction documents.
- Submit test reports to the project inspector within one work day of the day the tests were performed for any tests performed on-site.
- Submit material test reports in a timely manner such that construction is not delayed and not to exceed seven calendar days from the date the material tests were performed. Test reports are to be submitted to the project inspector, architect, structural engineer, and the school district and, when requested, to DSA. As a convenience, and if agreed upon by involved parties, the test reports may be submitted electronically as identified in *DSA PR 13-01 Section 4* of this procedure.
- Immediately submit reports of material tests not conforming to the requirements of the DSA-approved construction documents. These reports shall be submitted to DSA, the architect, structural engineer, project inspector and the school district.
- The engineering manager shall submit an interim Laboratory of Record Verified Report (form DSA 291) as prescribed in *DSA PR 13-01 Section 4*.

The reports are required to be submitted when any of the following events occur:

- Within 14 days of the completion of the material testing/special inspection program.

- Work on the project is suspended for a period of more than one month.
 - The services of the Laboratory of Record are terminated for any reason prior to completion of the project.
 - DSA requests a verified report. (See interim verified reports below. This is a "DSA request.")
- The engineering manager shall submit an interim verified report (form DSA 291) as prescribed in *DSA PR 13-01 Section 4* for each of the applicable sections of the form DSA 152, prior to the project inspector signing off that section of the project inspection card, if that section required material testing. (Interim verified reports are not required for the DSA 152-IPI unless the Laboratory of Record employs welding special inspectors for in-plant special inspection; see *DSA PR 13-01 Section 1.7* for verified report requirements.) The sections are:
 1. Initial Site Work and Foundation Prep.
 2. Vertical and Horizontal Framing.
 3. Appurtenances.
 4. Finish Site Work and Other Work.

3. Duties of Special Inspectors, employed by the Laboratory of Record, related to the use of form DSA 152 and DSA 152-IPI are as follows (per DSA PR 13-01):

- Meet with the project inspector, design professionals, and the contractor as needed to mutually communicate and understand the structural/material and fire/life safety testing and inspection program, and the methods of communication appropriate for the project.
- Report all project-related activities to the project inspector. The project inspector is responsible for monitoring the work of the Laboratory of Record and special inspectors to ensure the testing and special inspection program is satisfactorily completed.
- Perform work under the supervision of the engineering manager for the Laboratory of Record.
- Perform inspections in conformance with the DSA-approved construction documents, applicable codes and code reference standards.
- Prepare detailed daily inspection reports outlining the work inspected and provide the project inspector a copy of the reports within one day of the day the inspections were performed.
- Immediately submit reports of materials or work not conforming to the requirements of the DSA-approved construction documents. These reports shall be submitted to DSA, the architect, structural engineer, project inspector and the school district.
- Submit daily special inspection reports in a timely manner such that construction is not delayed and not to exceed seven days from the date the special inspections were performed. The reports are to be submitted to the architect, structural engineer, and the school district. As a convenience, and if agreed upon by involved parties, the special inspection reports may be submitted electronically as identified in *DSA PR 13-01 Section 4* of this procedure.
- The engineering manager for the Laboratory of Record shall submit verified report form DSA 291 as prescribed in *DSA PR 13-01 Section 4*. Unlike special inspectors independently contracting directly with the school district, the verified report form DSA 292 is not required since the form DSA 291 covers special inspections made

by laboratory employed special inspectors.

The reports are required to be submitted upon any of the following events occurring:

- Within 14 days of the completion of the special inspection work.
 - Work on the project is suspended for a period of more than one month.
 - The services of the special inspector are terminated for any reason prior to completion of the project.
 - DSA requests a verified report (see interim verified reports below; this is a *DSA request*).
- The engineering manager for the Laboratory of Record shall submit an interim verified report (form DSA 291) as prescribed in *DSA PR 13-01 Section 4* for each of the applicable sections of the form DSA 152, prior to signing off that section of the Project Inspection Card, if that section required special inspections. (Interim verified reports are not required for the DSA 152-IPI unless another special inspector, employed by the Laboratory of Record or independently and directly with the school board, performs welding special inspection; see *DSA PR 13-01 Section 1.7* for verified report requirements). The sections are:
 1. Initial Site Work and Foundation Prep.
 2. Vertical and Horizontal Framing.
 3. Appurtenances.
 4. Finish Site Work and Other Work.

K. LIMITATIONS:

This RFP is not an offer by the District to contract with any party responding to this RFP. The District reserves the right to add additional prequalified Respondents for consideration after distribution of this RFP if it is found to be in the best interest of the District. All decisions concerning the selection will be made in the best interests of the District. The awarding of the contract_pursuant to this RFP, if at all, is at the sole discretion of the District.

The District makes no representation that participation in the RFP process will lead to an award of contract or any consideration whatsoever. The District shall in no event be responsible for the cost of preparing any RFP Packet in response to this RFP. RFP Packets and any other supporting materials submitted to the District in response to this RFP will not be returned and will become the property of the District unless portions of the materials are designated as proprietary at the time of submittal, and are specifically requested to be returned. Vague designations and/or blanket statements regarding entire pages or documents are insufficient and will not bind the District to protect the designated matter from disclosure. Pursuant to *Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, RFP Packets shall be held confidential by the District and shall not be subject to disclosure under the California Public Records Act until after either: (1) the District and the successful Respondent have completed negotiations and entered into an Agreement, or (2) the District has rejected all Proposals. Furthermore, the District will have no liability to the Respondent or other party as a result of any public disclosure of any RFP Packet.

L. RESTRICTIONS ON LOBBYING AND CONTACTS:

From the period beginning on the date of the issuance of this RFP and ending on the date of the award of the contract, no person, or entity submitting in response to this RFP, nor any officer, employee, representative, agent, or consultant representing such a person or entity shall contact through any means or engage in any discussion regarding this RFP, the evaluation or selection process/or the award of the contract with any member of the District, Governing Board, selection members, or any member of the Citizens' Oversight Committee. Any such contact shall be grounds for the disqualification of the Respondent submitting a RFP Packet.

J. STATEMENT OF INTEREST AND FEE PROPOSAL:

1. General Information / Instructions - Statement of Interest

- 1.1.** The District is requesting a Statement of Interest and a Fee Proposal for the "Project" which shall require coordination, administration, consulting and advice, and related services.
- 1.2** The RFP Packet must contain all requested information about the firm and must be on no larger than 8 1/2 x 11 paper and no more than fifteen (15) printed pages in length. The 15-page limit (as if printed single sided) shall cover Sections 2.1 thru 2.4 below. Proposal should be complete and prepared to provide an insightful, straightforward, and concise overview of the capabilities of firm.

Additional information about the firm and/or personnel may be placed in an Appendix which would not count against the 15-page limit.

2. Content – Statement of Qualifications

- 2.1.** **Letter of Interest** - A dated Letter of Interest must be submitted, including the legal name of the firm(s), address, telephone, fax numbers, email address(es), and the name, title, and signature of the person(s) authorized to submit the Proposal on behalf of the firm. The Letter of Interest should provide a brief statement of firm's experience indicating the unique background and qualities of the firm, its personnel, and its sub-consultants, and what will make the firm a good fit for work in the District. The letter shall also include the following statements:

"[RESPONDENT'S NAME] received a copy of the District's Agreement attached as **EXHIBIT A** to the RFP. [RESPONDENT'S NAME] has reviewed the indemnity provisions in **EXHIBIT A** and insurance requirements contained in the Agreement. If given the opportunity to contract with the District, [RESPONDENT'S NAME] has no objections to the use of the Agreement."

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

2.2 Firm Information

Provide a brief history of firm, team firms, and, if a joint venture, of each participating firm. Identify legal form, ownership, and senior officials of company(ies). Describe number of years in business and types of business conducted.

Describe staffing capacity and resources to perform the scope of work. Provide resume(s) of the assigned personnel in an Appendix.

2.3 Litigation. All litigation arising from the project, if any, in the past five (5) years. State the issues in the litigation, the status of litigation, names of parties, and outcome.

2.4 Professional Fees

Firms shall provide a detailed fee proposal. Provide a separate fee proposal for each of the two sites. The two school sites will be bundled under one Agreement but, for accounting purposes, each school site shall be invoiced separately.

2.4.1 Include a line item for a 10% contingency to the proposed fee. The proposed fee with the 10% contingency will be considered the not-to-exceed fee for the Project. The contingency will be to cover potential additional services and shall be subject to District approval.

Breakdown of Fee Proposal shall be submitted as follows:

1. Proposed Fee with an detailed hourly breakdown for each test and/or inspection listed in the DSA 103-19.
2. Contingency of 10% of Proposed Fee
3. Not-to-Exceed Fee (Proposed Fee plus 10% Contingency)

2.4.2 Provide a detailed schedule of the Consultant's and Sub-consultant's hourly billing rates and a breakdown of associated costs for all tasks proposed (including contingency costs per task). Also note the time period that the fee schedule would apply and shall include the period covering the project duration.

Fee Schedule shall also be in accordance with the latest Master Agreement between Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, AFL-CIO ("Union"), and Council of Engineers and Laboratory Employers (CELE).

2.4.3 The District reserves the right to negotiate different rates submitted with the RFP prior to the execution of the agreement.

3. Insurance (Mandatory Requirements). Attach a letter from your insurance company or a certificate of liability insurance ("ACORD") indicating your firm's ability to provide insurance as required in the attached agreement, including but not limited to the following:

3.1 A.M. Best financial strength rating (FSR) of A- or better.

3.2 Commercial General Liability Insurance: Commercial general Liability Insurance shall be at least as broad as Insurance Services office General Liability

Coverage (Occurrence Form CG 0001), with coverage limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage/ Two Million Dollars (\$2,000,000) aggregate.

- 3.3 Automobile Liability Insurance:** Automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto), with coverage limits of at least One Million Dollars (\$1,000,000) for bodily injury and property damage each accident limit and Two Million Dollars (\$2,000,000) in the aggregate.
- 3.4 Workers' Compensation and Employer's Liability Insurance:** The selected Architect shall insure (or be a qualified self-insured) under the applicable laws relating to workers' compensation insurance, all of their employees working on the Project, in accordance with the "Workers Compensation and Insurance Act," Division IV of the California Labor Code. The selected Architect shall provide employer's liability insurance in the amount of at least One Million Dollars (\$1,000,000) per accident for bodily injury and disease.
- 3.5 Errors and Omissions Insurance:** Errors and omissions insurance on an claims made basis with a limit of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate with a deductible in an amount not to exceed the sum of Ten Thousand Dollars (\$10,000.00).
- 3.6** All insurance will be in a form and with insurance companies acceptable to the District.
- 3.7** Insurance carriers shall be qualified to do business in California and maintain an agent for process within the State.

H. DISTRICT'S EVALUATION / SELECTION PROCESS

- 1.** Submittal will be reviewed for responsiveness and evaluated pursuant to established objective criteria, with particular attention to, without limitation, each respondent's qualifications, demonstrated competence in like construction, and the Firm's ability to integrate its personnel with the District's staff and consultants.
- 2.** Any comments or objections to the form of Agreement attached hereto as **EXHIBIT A** to this RFP shall be provided in writing (by the date in the Schedule of Activities) before submitting their Proposal. Any comments or objections to the form of Agreement not provided in writing will not be entertained by the District.
- 3. District Investigations -** The District may check references, and may perform investigations of firm that extend beyond the information in the proposals.

I. FINAL DETERMINATION AND AWARD:

- 1.** The District reserves the right to contract with any entity responding to this RFP, to reject any proposal as non-responsive, and not to contract with any firm for the services described herein. The District reserves the right to seek proposals from or to contract with any firm not participating in this process. The District reserves the right to reject any or all submissions, to request further information, to negotiate with any firm, to extend the submission deadline, or to amend or cancel in part or in its entirety this RFP. This RFP does not commit the District to award a contract or to reimburse any firm for costs incurred in submitting a proposal.

2. The awarding of contract(s) is at the sole discretion of the District. The District may, at its option, determine to award contracts only for portions of the scope of work. In such case, the successful proposing firm will be given the option not to agree to enter into the Agreement and the District will retain the right to negotiate with any other proposing firm selected as a finalist. If no finalist is willing to enter into a contract for the reduced scope of work, the District will retain the right to enter into negotiations with any other Respondent responding to this RFP.
3. The RFP packet, and any other supporting materials submitted to the District in response to this RFP will not be returned and will become the property of the District unless portions of the materials are designated as proprietary at the time of submittal, and are specifically requested to be returned. This RFP does not commit the District to negotiate an agreement with any proposing firm or individual.

END OF RFP

**AGREEMENT FOR MATERIALS TESTING AND
SPECIAL INSPECTION SERVICES**

THIS AGREEMENT FOR MATERIALS TESTING AND SPECIAL INSPECTION SERVICES (“Agreement”) is made and entered into effective _____, 20__, by and between the Oakland Unified School District, a school district duly organized and existing under the laws of the State of California (the “District”), and _____ (the “Consultant”), with respect to the following recitals:

- A. District proposes to undertake the construction of an improvement project which requires the services of a duly qualified and licensed materials testing and special inspection consultant.
- B. Consultant represents that Consultant is licensed to provide materials testing and special inspection services in the State of California and is specially qualified to provide the services required by the District in this Agreement.
- C. The parties have negotiated the terms pursuant to which Consultant will provide such services and reduce such terms to writing by this Agreement.

In consideration of the covenants and conditions contained in this Agreement, the parties agree as follows:

1. **Retention of Consultant.** District retains Consultant to perform, and Consultant agrees to provide to District, for the consideration and upon the terms and conditions set forth below, the materials testing and special inspection services specified in this Agreement. Consultant agrees to perform such services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. All services performed by the Consultant under this Agreement shall be conducted in a manner consistent with the level of care and skill ordinarily exercised by materials testing and special inspection consultants specially qualified to provide the services required by the District.

2. **Description of Project.** The project concerning which such materials testing and special inspection services shall be provided (“the Project”) is described as the following:

_____.

3. **Term; Basic Services.** The term for performance of the Basic and Additional Services (“Services”) shall be the duration of the Project (“Term”), and Consultant shall complete the Services within the Term. Time is of the essence for performance of the Services under this Agreement. The Project is expected to be complete as of _____, 20__, but may not be completed until later if delays in design or construction arise. Consultant’s “Basic Services” consist of materials testing and special inspection services more specifically described in the attached *Exhibit B*. Consultant shall perform all Basic Services required by this Agreement, even if no more compensation is possible due total compensation having reached the not-to-

exceed amount. If delays in completion of the Project occur that are not caused by wrongful conduct by Consultant, including but not limited to Consultant's breaches of contract or deficient performance of Basic or Additional Services, then Consultant shall be entitled to an amendment to the Agreement that increases the not-to-exceed amounts for Basic Services during the additional time of the Project.

In addition, as a part of its Basic Services, the Consultant shall assist the District in evaluating claims, disputes and other matters in question between the contractor and the District relating to Consultant's work, including but not limited to claims made against the District as a result of Consultant's alleged or claimed errors or omissions, and shall in all instances provide such truthful testimonial assistance as may be required by the District at no cost to the District.

Consultant shall confer and cooperate with District's other consultants. Consultant shall take precautions to minimize any damage due to Consultant's activities. Consultant shall be responsible and liable for any damage Consultant causes through its wrongful acts or omissions.

During the construction phase, Consultant shall visit the Project site when requested by District to observe conditions encountered by the contractor and to assess the progress and quality of contractor's work. Consultant shall participate in job site meetings as requested by District.

The Consultant must comply with the applicable requirements of the Division of State Architect Construction Oversight Process ("DSA Oversight Process"), including but not limited to (a) obtaining a copy of the DSA-approved construction documents and Statement of Structural Tests and Special Inspections (DSA form 103) from the Architect before the beginning of construction; (b) reporting all project related activities to the Inspector of Record (the Inspector of Record is responsible for monitoring the work of the Laboratory of Record and Special Inspectors to ensure the testing and special inspection program is satisfactorily completed); (c) submitting applicable verified reports (DSA forms 291, 292, and 293) to DSA, Inspector of Record, Owner and Architect; and (d) coordinating with the Owner, Owner's Architect, any Construction Manager, the Inspector of Record, and the Contractor to meet the DSA Oversight Process requirements without delay or added costs to the Project.

In the performance of the special inspection duties required by this Agreement, the Consultant exercises limited authority as defined in this Agreement. The Consultant shall not:

- a. Authorize deviations from the construction contract documents;
- b. Avoid conducting any required tests;
- c. Enter the area of responsibility of the contractor's field superintendent;
- d. Expedite the job for the contractor;
- e. Advise on, or issue directions relative to, any aspect of the building technique or sequence unless a specific technique or sequence is called for in the specifications;

- f. Approve shop drawings or samples;
- g. Authorize or advise the District to occupy the Project, in the whole or in part, prior to final acceptance of the Project; or
- h. Interfere in contractor/subcontractor relationships.

If Consultant determines contractor is not meeting the requirements of Consultant's _____ recommendations or the plans and specifications, Consultant shall immediately bring that information to District's attention.

Consultant shall retain all samples for _____ [insert period of time].

For all Basic Services satisfactorily performed, compensation shall be as described in *Exhibit A* to this Agreement.

4. **Additional Services.** Any services not included in this Agreement but related to the Project shall be considered "Additional Services." Compensation for additional services shall be as described in *Exhibit A* to this Agreement. Consultant shall keep complete records showing all hours worked and all costs and charges incurred for Additional Services. District shall be given reasonable access to those records for audit purposes. Consultant shall provide Additional Services if directed in writing by District to perform specific Additional Services and if sufficient contract funds for Additional Services remain to pay for the directed Additional Services (see *Exhibit A*).

5. **Payment.** Services satisfactorily performed shall be billed monthly via properly documented and submitted invoices. Invoices that are not disputed by District shall be paid within _____ () days of District's receipt of the invoice. Consultant shall comply with any applicable prevailing wage law. Consultant shall not be reimbursed for any of its expenses; the parties agree that Consultant shall pay all of its expenses from its fees for Services.

6. **Insurance.** Consultant shall purchase and maintain insurance that will protect Consultant from the claims set forth below that may arise out of or result from the Consultant's performance of services or failure to perform services required by this Agreement:

- a. Claims under Workers' Compensation, disability benefits and other similar employee benefits acts that are applicable to the work performed;
- b. Claims for damages because of bodily injury, occupational sickness or disease or death of Consultant's employees, agents or invitees;
- c. Claims for damages because of bodily injury or death of any person;

- d. Claims for damages insured by usual personal injury liability coverage that are sustained (1) by any person as a result of an offense directly related to the employment of such person by the Consultant or (2) by any other person;
- e. Claims for damages, other than to the work itself because of injury to or destruction of tangible property, including loss of use therefrom; or
- f. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

Consultant's comprehensive general and automobile liability insurance shall be written for not less than the following limits of liability:

Comprehensive General Liability

Personal Injury:	Property Damage:
\$ _____ Each Occurrence	\$ _____ Each Occurrence
\$ _____ Aggregate	\$ _____ Aggregate

Comprehensive Automobile Liability

Bodily Injury:	Property Damage:
\$ _____ Each Person	\$ _____ Each Occurrence
\$ _____ Each Occurrence	

Consultant shall also maintain errors and omissions insurance on an occurrence basis with limits of at least _____ (\$ _____) with a deductible in an amount not to exceed the sum of _____ Dollars (\$ _____).

7. **Hazardous Materials.** In the event the District or Consultant becomes aware of the presence of, or exposure of persons to, asbestos, polychlorinated biphenyl (PCB) or any other toxic or hazardous contaminants, materials, air pollutants or water pollutants at the Project, or the substantial risk thereof, each shall have a duty immediately to notify the other in writing.

8. **Compliance with Laws.** Consultant shall be familiar with and shall comply with all State and Federal laws and regulations applicable to the Project or lawfully imposed upon the Project by agencies having jurisdiction over the Project.

9. **Termination.**

a. District may unilaterally terminate this Agreement for any reason, in its absolute discretion, by giving Consultant seven (7) days written notice of termination.

b. This Agreement may also be terminated by either Party upon seven (7) days written notice should the other Party fail substantially to perform their duties or for any material breach under this Agreement.

c. In the event of termination, Consultant shall be compensated for all services satisfactorily performed to the termination date and, if terminated under subparagraph (a) above, any costs incurred by reason of such termination; but less any amounts the District is entitled to withhold under law or this Agreement.

10. **Independent Contractor Status.** Consultant and any and all agents and employees of Consultant shall perform the services required pursuant to this Agreement as an independent contractor, not as officers, employees, or agents of the District. In providing the services contemplated by this Agreement, Consultant shall maintain a professional working relationship with the District, the Contractor, the Inspector and the Architect. Nothing contained in this Agreement shall be deemed to create any contractual relationship between Consultant and the Architect, Inspector or the Contractor for the Project, nor shall anything contained in this Agreement be deemed to give any third party any claim or right of action against the District or the Consultant which does not otherwise exist.

11. **Indemnity.** Consultant shall indemnify, defend, and hold harmless the District, its Board of Trustees, officers, agents, and employees from any and all claims damages, losses, causes of action and demands, including reasonable attorney's fees and costs, incurred in connection with or in any manner arising out of Consultant's performance of or failure to perform any of the duties contemplated by this Agreement or for any tax liability arising out of this Agreement.

12. **Taxes.** Consultant shall be liable and solely responsible for paying all required taxes including, but not limited to, Federal and State income taxes and social security taxes. Consultant agrees to indemnify, defend and hold the District harmless from any liability which Consultant may incur to the Federal or State governments as a consequence of this Agreement. All payments to the Consultant shall be reported to the appropriate Federal and State tax authorities as required.

13. **Successors and Assigns.** The District and Consultant, respectively, bind themselves, their successors, assigns, and representatives to the other Party to this Agreement, and to the partners, successors, assigns, and legal representatives of such other Party with respect to all terms of this Agreement. Neither District nor Consultant shall assign or transfer any interest in this Agreement without the written consent of the other.

14. **Notices.** All payments and any notices or communications under this Agreement shall be in writing and shall be deemed to be duly given if served personally on the Party to whom it is directed or shall be deemed served when deposited in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, and addressed in the case of:

Consultant: _____

District:

Oakland Unified School District

Attn: _____

_____, California _____

15. **Governing Law.** This Agreement shall be governed by the laws of the State of California, excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Alameda, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

16. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

17. **Amendment.** This Agreement cannot be changed or supplemented orally and may be modified or superseded only by written instrument executed by all parties.

18. **Compliance with Law.** While performing the services contemplated by this Agreement, Consultant agrees to comply with all applicable laws and regulations.

19. **Requests.** Consultant agrees to timely and properly complete all reports requested by the District or as required by law. In addition, Consultant agrees that District has a right to a copy of all reports and other records created or maintained by Consultant.

20. **Counterparts.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

21. **Interpretation.** The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either Party.

22. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and supersedes any prior agreement or understanding. There are no understandings, agreements, representations or warranties, expressed or implied, not specified in this Agreement. Consultant, by the execution of this Agreement, acknowledges that Consultant has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

23. **Warranty of Authority.** The persons signing this Agreement warrant that they are legally authorized to do so on behalf of the respective Parties, and by their signatures to bind the respective Parties to this Agreement.

24. **Attorneys' Fees.** If a party to this Agreement commences a legal action against the other

party to enforce a provision of this Agreement or seek damages related to the services provided under this Agreement, the prevailing party in the legal action will be entitled to recover from the other party all of its reasonable litigation expense, costs, and fees actually incurred, including reasonable attorneys' and experts' fees.

25. **Mediation.** A party to this Agreement shall, as a condition precedent to initiating any litigation against the other party, demand mediation of any dispute. The parties shall endeavor to include any third party claimant in the mediation. The parties shall select a mediator and schedule the mediation within thirty (30) days of the initial demand for mediation. If the parties cannot agree on a mediator, the mediator shall be appointed by JAMS. The parties to the mediation, including the parties to this Agreement, shall pay equal shares of the mediator's fees. Each party shall bear its own attorney's fees related to the mediation.

26. **Fingerprinting and Criminal Background Check Certification.** Consultant shall at all times comply with the fingerprinting and criminal background investigation requirements of the California Education Code ("Education Code") section 45125.1. Before performing any Services, Consultant shall execute and return the District's Fingerprinting Notice and Acknowledgement form and the required certification (see *Exhibit C*).

Consultant further agrees and acknowledges that if at any time during the Term of this Agreement Consultant learns or becomes aware of additional information which differs in any way from the representations set forth above, or Consultant add personnel who will provide Services under this Agreement, Consultant shall immediately notify District and prohibit any new personnel from interacting with District students until the fingerprinting and background check requirements have been satisfied and District determines whether any interaction is permissible.

27. **Forms.** Prior to performing any Services, Consultant shall prepare, execute, and submit all forms that may be required by law for this Agreement, including but not limited to disabled veteran business enterprises ("DVBE") certification (Education Code §17076.11) and an Iran Contract Act certification (Public Contract Code §2204). If a form is necessary, Consultant shall use the District's versions of these forms, which the District shall make available upon request.

28. **Sanctions in Response to Russian Aggression.** The District is using State of California funds for this Contract, and therefore Consultant must comply with the Governor's March 4, 2022, Executive Order N-6-22 ("Order") relating to any existing sanctions imposed by the United States government and the State of California in response to Russia's actions in Ukraine, including additional requirements for contracts of \$5 million or more. Failure to comply may result in the termination of the Contract. *[Note to District: If no state funds are being used for this contract, then the District may either (1) delete this paragraph in its entirety; or (2) delete the previous two sentences and replace them with the following:]* The District requires Consultant to comply with the Governor's March 4, 2022, Executive Order N-6-22 ("Order") relating to any existing sanctions imposed by the United States government and the State of California in response to Russia's actions in Ukraine, including additional requirements for contracts of \$5 million or more. Failure to comply may result in the termination of the Contract.

CONSULTANT

_____ [FIRM NAME]

By: _____

Name: _____

Title: _____

DISTRICT

Oakland Unified School District

By: _____

Name: _____

Title: _____

Approved As To Form:

OUSD Facilities Legal Counsel Date

SPECIMEN

EXHIBIT A

Payments

For Basic and Additional Services satisfactorily performed, and based on invoices properly documented and submitted, Consultant shall be compensated \$ _____ per hour. ***[If consultant has multiple hourly rates, use this sentence instead: For the Basic and Additional Services satisfactorily performed, and based on invoices properly documented and submitted, Consultant shall be compensated according to its hourly rate schedule (see next page).]***

For Basic Services, Consultant's total compensation shall not exceed \$ _____, which is Consultant's estimate of the maximum total cost of its Basic Services on the Project, based on its _____, 20____, fee estimate. Consultant acknowledges that the not-to-exceed fee for Basic Services, above, includes contingency compensation in the foreseeable event that more time and costs may be necessary to complete the Basic Services.

For Additional Services, Consultant's total contingency compensation shall not exceed \$ _____.

The total price under this Agreement for Basic and Additional Services shall not exceed \$ _____. ***[insert total of previous two paragraphs]*** Consultant will not be compensated for any Basic or Additional Services required as a result of its wrongful acts or omissions.

EXHIBIT B

Scope of Services

SPECIMEN

EXHIBIT C

Fingerprinting Notice and Acknowledgement Form

SPECIMEN

FINGERPRINTING NOTICE AND ACKNOWLEDGEMENT
FOR CONTRACTS OTHER THAN CONSTRUCTION CONTRACTS

(Education Code Section 45125.1)

Other than business entities performing construction, reconstruction, rehabilitation, or repair who have complied with Education Code section 45125.2, business entities entering into contracts with the District must comply with Education Code sections 45125.1. Such entities are responsible for ensuring full compliance with the law and should therefore review all applicable statutes and regulations. The following information is provided simply to assist such entities with compliance with the law:

1. You (as a business entity) shall ensure that each of your employees who interacts with pupils outside of the immediate supervision and control of the pupil's parent or guardian or a school employee has a valid criminal records summary as described in Education Code section 44237. (Education Code §45125.1(a).) You shall do the same for any other employees as directed by the District. (Education Code §45125.1(c).) When you perform the criminal background check, you shall immediately provide any subsequent arrest and conviction information it receives to the District pursuant to the subsequent arrest service. (Education Code §45125.1(a).)
2. You shall not permit an employee to interact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Education Code section 45122.1. (Education Code §45125.1(e).) See the lists of violent and serious felonies in *Attachment A* to this Notice.
3. Prior to performing any work or services under your contract with the District, and prior to being present on District property or being within the vicinity of District pupils, you shall certify in writing to the District under the penalty of perjury that neither the employer nor any of its employees who are required to submit fingerprints, and who may interact with pupils, have been convicted of a felony as defined in Education Code section 45122.1, and that you are in full compliance with Education Code section 45125.1. (Education Code §45125.1(f).) For this certification, you shall use the form in *Attachment B* to this Notice.
4. If you are providing the above services in an emergency or exceptional situation, you are not required to comply with Education Code section 45125.1, above. An "emergency or exceptional" situation is one in which pupil health or safety is endangered or when repairs are needed to make a facility safe and habitable. The District shall determine whether an emergency or exceptional situation exists. (Education Code §45125.1(b).)
5. If you are an individual operating as a sole proprietor of a business entity, you are considered an employee of that entity for purposes of Education Code section 45125.1, and the District shall prepare and submit your fingerprints to the Department of Justice as described in Education Code section 45125.1(a).

(Education Code §45125.1(h).)

I, as _____ *[insert "owner" or officer title]* of _____
[insert name of business entity], have read the foregoing and agree that _____
_____ *[insert name of business entity]* will comply with the requirements of Education
Code §45125.1 as applicable, including submission of the certificate mentioned above.

Dated: _____

Name: _____

Signature: _____

Title: _____

ATTACHMENT A

Violent and Serious Felonies

Under Education Code sections 45122.1 and 45125.1, no employee of a contractor or subcontractor who has been convicted of or has criminal proceedings pending for a violent or serious felony may come into contact with any student. A violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code. Those felonies are presently defined as:

- (1) Murder or voluntary manslaughter.
- (2) Mayhem.
- (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
- (5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.
- (6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.
- (9) Any robbery.
- (10) Arson, in violation of subdivision (a) or (b) of Section 451.
- (11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.
- (12) Attempted murder.
- (13) A violation of Section 18745, 18750, or 18755.
- (14) Kidnapping.
- (15) Assault with the intent to commit a specified felony, in violation of

Section 220.

- (16) Continuous sexual abuse of a child, in violation of Section 288.5.
- (17) Carjacking, as defined in subdivision (a) of Section 215.
- (18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.
- (19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.
- (20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.
- (21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.
- (22) Any violation of Section 12022.53.
- (23) A violation of subdivision (b) or (c) of Section 11418.

A serious felony is any felony listed in subdivision (c) Section 1192.7 of the Penal Code. Those felonies are presently defined as:

- (1) Murder or voluntary manslaughter; (2) Mayhem; (3) Rape; (4) Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) Lewd or lascivious act on a child under the age of 14 years; (7) Any felony punishable by death or imprisonment in the state prison for life; (8) Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) Attempted murder; (10) Assault with intent to commit rape, or robbery; (11) Assault with a deadly weapon or instrument on a peace officer; (12) Assault by a life prisoner on a non-inmate; (13) Assault with a deadly weapon by an inmate; (14) Arson; (15) Exploding a destructive device or any explosive with intent to injure; (16) Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem; (17) Exploding a destructive device or any explosive with intent to murder; (18) Any burglary of the first degree; (19) Robbery or bank robbery; (20) Kidnapping; (21) Holding of a hostage by a person confined in a state prison; (22) Attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) Any felony in which the defendant personally used a dangerous or deadly weapon; (24) Selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug,

as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) Grand theft involving a firearm; (27) carjacking; (28) any felony offense, which would also constitute a felony violation of Section 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machine gun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100; (37) intimidation of victims or witnesses, in violation of Section 136.1; (38) criminal threats, in violation of Section 422; (39) any attempt to commit a crime listed in this subdivision other than an assault; (40) any violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section 11418; and (42) any conspiracy to commit an offense described in this subdivision.

