

BERKELEY UNIFIED SCHOOL DISTRICT
2020 Bonar Street
Berkeley, CA 94702
March 9, 2018

REQUEST FOR QUALIFICATIONS AND PROPOSALS

**FACILITIES MASTER PLAN PREPARATION
FOR PROJECTS AT
BERKELEY UNIFIED SCHOOL DISTRICT**

The Berkeley Unified School District is responsible for educating more than 9,400 individual students in 11 public elementary schools, 3 middle schools, one comprehensive high school, and an alternative high school. In addition, the district has 3 preschool facilities and an Adult School serving several thousand students each year. With a tradition of excellence rooted in a vibrant community, Berkeley Unified alumni have become national and international leaders in business, civic society, politics, academia, sports and the arts. Students and staff in Berkeley Unified come from a wide variety of ethnic and socioeconomic backgrounds, surrounded by one of the most intellectually and culturally rich regions in the United States.

The District is soliciting for Statements of Qualifications and Proposals from qualified persons, firms, partnerships, corporations, associations, or professional organizations for the following services with respect to the District's potential 2020 facilities bond measure.

See **SCOPE OF WORK FOR CONSULTANTS** below for detailed description of services.

Statement of Qualifications: Provide a Statement of Qualifications for provision of all services referenced.

Proposals for Services: Provide a lump-sum proposal for the preparation of a District-wide Facilities Master Plan.

Any Statement of Qualifications and Proposals submitted in response to this Request for Qualifications and Proposals ("RFQ/P") must specifically state the scope of the above-referenced services that the respondent is proposing to provide to the District. Any entity retained as a result of this RFQ/P shall be required to work in conjunction with all other technical consultants, all other entities retained by the District pursuant to this RFP, district architects, and any program, project or construction manager retained by the District for the Project.

PROCESS FOR SUBMISSION OF PROPOSALS

Each proposal submitted in response to this Request for Qualifications and Proposals should be in a sealed envelope directed to **Tom Bollinger, Director of Purchasing** and identify the name of the entity submitting the Statement of Qualifications and Proposal. Respondents should mail or deliver five (5) copies, one (1) unbound copy and one (1) electronic copy on flash drive of their Proposals to:

**Tom Bollinger, Director of Purchasing, Berkeley Unified School District
2020 Bonar Street, Room 232, Berkeley, CA 94702**

All Proposals are due by 10:00 a.m., on April 5, 2018.

Fax or email responses will not be accepted.

Any inquiries regarding this RFQ/P should be directed to: Maria Denney at maria@k12schoolfacilities.org with copy to William Savidge, Program Management Consultant in Association with Van Pelt Construction Services at bsavidge@k12schoolfacilities.org, on or before March 30, 2018, at 10:00 a.m.

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**.

LIMITATIONS

This RFQ/P is neither a formal request for bids, nor an offer by the District to contract with any party responding to this RFQ/P. This RFQ/P does not commit the District to award a contract or to reimburse any applicant for costs incurred in submitting a response to this RFQ/P. The District, in its sole discretion, reserves the right to reject any or all Proposals submitted; to choose any combination of Proposals; to interview any, all, or none of the respondents; to negotiate with any respondent; to extend the deadline to submit a Proposal; or to amend or cancel in part or in its entirety this RFQ/P.

RESTRICTIONS ON LOBBYING AND CONTACTS

From the period beginning on the date of the issuance of this RFQ/P and ending on the date of the award of an agreement for the above-referenced services for which Respondent is submitting its Proposal, no person or entity submitting a Proposal, 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 RFQ/P, the evaluation or selection process/or the award of the agreement for the above-referenced services for which Respondent is submitting its Proposal with any member of the District, its governing board ("Board"), members of the selection committee, or any member of any other District committee. Any such contact shall be grounds for immediate disqualification of the Respondent.

DESCRIPTION OF DISTRICT NEEDS

The District invites any qualified firm to submit responses related to its ability to provide any of the referenced services for various projects. In general, the firm(s) ultimately selected to provide the referenced services shall furnish all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the referenced services for which Respondent is submitting its Proposal. Any firm or individual hired by the District as a result of this RFQ/P will be an independent contractor to provide services for specific projects and will not be an employee of the District.

SCOPE OF SERVICES REQUESTED

LIST OF SCHOOLS

Each of the District's schools shall be included within the scope of Master Plan preparation services.

Child Development Centers: Franklin, Hopkins, King

Elementary Schools: Berkeley Arts Magnet (BAM), Cragmont, Emerson, Jefferson, John Muir, LeConte, Malcolm X, Oxford, Rosa Parks, Thousand Oaks, Washington

Middle Schools: Longfellow, Martin Luther King Jr., Willard

Berkeley High School and Berkeley Technology Academy

Berkeley Adult School

Administration Building/West Campus

Plant Operations and Maintenance

SCOPE OF WORK FOR CONSULTANTS

1. **Facilities Condition Assessment:** Firm shall prepare a digital database of all existing District properties including location, age of each of the buildings on the site, land area and site improvement.
 - a. Analyze the condition of building systems including electrical/low voltage, mechanical/plumbing, roofing/waterproofing, building envelope, building finishes, classrooms, site elements and accessibility components.
 - b. Coordinate with BUSD Facilities to integrate existing structural reports into overall needs assessment.
 - c. Utilize BUSD Facilities maintenance information from records and interviews to supplement site investigations.
 - d. Utilize previous BUSD Facilities systems replacement project information.
 - e. Prepare a Facilities Condition Index for each of the sites with reference to remaining useful life of systems and costs to repair/replace systems.
2. **Educational Facilities Program Needs Assessment:** Firm shall develop and prepare an updated Educational Program suitability assessment for each of the sites. This shall include an assessment of individual classroom and support space suitability, confirmation of whether classroom and support spaces meet BUSD and state standards for size, location, and individual components for a quality educational facility.
 - a. Develop a matrix of Educational Facilities Program needs for each site and a summary of priority educational facility needs.
3. **Integrated Facilities Master Plan:** Utilizing Facilities Condition Assessment and Education Facilities Program Needs Assessment prepare an Integrated Facilities Master

Plan for BUSD which can serve as the basis for development of a project list for a 2020 General Obligation Bond measure.

- a. Include and prioritize remaining projects not completed under the District's current Measure I Bond Program.
 - b. Focus on developing and prioritizing comprehensive modernizations which can meet building system and educational program needs for the sites.
 - c. Include within proposed project planning: upgrades to District-wide educational technology, completion of the District's Solar Master Plan remaining installations, updated furniture and equipment for each site, and integrate Sustainability practices consistent with Board-adopted Collaborative for High Performance Schools (CHPS).
 - d. Incorporate into the plan a Prioritization Strategy for modernization and/or replacement facilities with detailed Cost Estimates. Include a Cost Matrix as part of the Executive Summary.
4. **Community Outreach:** The scope of services will include individual school meetings with the community and the staff at District school sites to identify key issues related to the school facilities. Firm will also meet and coordinate with District staff to review the requirements of the District's administrative and maintenance facilities. Firm shall also propose additional methods (e.g. website, interviews, surveys and focus groups) to gather information and schedule to obtain additional community input regarding school facilities.
5. **Educational Specification and Standards:** Firm shall utilize the Board-adopted Educational Specifications and provide recommendations to update, the District's current Educational Specifications and Standards to be consistent with the District's Educational Facilities Program and with consideration of the input received from the community and District staff.
6. **Coordination with District:** Firm shall consult with, and be directed by the District's facilities and planning staff in order to incorporate District recommendations and policies into the long-range facilities master plan.
- a. Proposals shall include regular updates to the District's Board Facilities Subcommittee and the Board of Education.

SUBMITTAL FORMAT

Firms responding to this RFQ/P must follow the format below. Material must be in 8-1/2 x 11inch format, with a font no less than 11 point, and total no more than twenty-five (25) pages, not including the cover letter, table of contents, divider tabs, resumes, and fee schedules. Each SOQ & Proposal shall include a Front Cover stating the following: "Statement of Qualifications and Proposals" for [FIRM NAME] for Master Planning Services in Response to Berkeley Unified School District RFQ/P.

Submittals are to be made in sealed packages with the name of the responding firm clearly marked on the outside of each package.

Submittals shall include divider tabs labeled with boldface headers below; e.g. the first tab would be entitled "**Cover Letter**", the second tab entitled "**Relevant Qualifications**", etc.

Provide Five (5) bound copies, One (1) unbound copy, and One (1) electronic copy delivered on flash drive.

BUSD RFQ/P - MASTER PLANNING SERVICES

The unbound copy shall be marked "Copy for Reproduction", and shall be formatted as follows:

- No divider sheets or tab.
- Pages with proprietary information removed.
- A cover sheet listing the firm's name, the total number of pages, and identifying those pages that were removed due to proprietary information.

The electronic copy will only be accepted via flash drive in the following programs: Microsoft Office Suite or PDF.

Each submission package will be reviewed to determine its completeness prior to the actual evaluation. If a respondent does not respond to all categories requested, the respondent may be disqualified from further consideration.

1. Cover Letter (maximum of 2 pages)

- This should be a letter of introduction signed by an authorized officer of the firm. If the firm is a joint venture, duplicate the signature block and have a principal or officer sign on behalf of each party to the joint venture.
- Firm name.
- Address, include any branch office address and point of contact.
- Telephone number.
- Facsimile number.
- E-Mail address.
- Identify team.
- Include a brief description of why your firm is well suited for, and can meet, the District's needs.
- Clearly identify the individual(s) who are authorized to speak for the firm during the evaluation process.
- Summarize qualifications most relevant to this Project.
- **Must include one of the following statements:**

[INSERT FIRM'S NAME] received a copy of the District's standardized form of Agreement for Professional Services ("Agreement") attached as Exhibit "A" to the RFQ/P. [INSERT FIRM'S NAME] has reviewed the indemnity provisions and professional liability insurance provisions contained in the Agreement. If given the opportunity to contract with the District, [INSERT FIRM'S NAME] has no objections to the use of the Agreement."

Or

[INSERT FIRM'S NAME] received a copy of the District's standardized form of Agreement for Professional Services ("Agreement") attached as Exhibit "A" to the RFQ/P. [INSERT FIRM'S NAME] has reviewed the indemnity provisions and professional liability insurance provisions contained in the Agreement. If given the opportunity to contract with the District, [INSERT FIRM'S NAME] has no objections to the use of the Agreement other than as follows: [INSERT]."

- 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. Firm Information

Respondent must provide the following for itself and for any and all other firms with which it will joint venture or associate on this Project:

- Company name.
- Address.
- Telephone.
- Fax.
- Website.
- Name and email of main contact.
- Federal Tax I.D. Number.
- License or Registration Number.
- Type of organization/business structure (ownership, legal form, i.e. corporation, partnership, etc., and senior officials of company). If a joint venture, describe the division of responsibilities between participating companies, offices (location) that would be the primary participants, and percentage interest of each firm.
- Certificate(s) of Insurance identifying the firm's current insurance coverages.
- Number of professional employees and support staff (licensed professionals, technical support).

- Location of nearest branch office where the bulk of services solicited will be performed and number of professional employees located there.
- Statement affirming the firm's capacity to provide the required insurance coverage.
- A brief description and history of the firm, including number of years the firm has been in business and date firm was established under its given name.
- Any State of California certification for your firm of Small Business or Disabled Veteran Business Enterprise status.
- How sub-consultants are generally used by your firm and to what extent work is performed in-house versus by a sub-consultant.
- How sub-consultants will be utilized on the Program and/or project(s) within the Program and to what extent work will be performed in-house.

3. Qualifications of Consultant

Respondent must state its qualifications for the anticipated scope of work and its experience with projects of comparable size and complexity. In particular, respondent shall provide any experience applicable to public school projects, including master planning, new buildings, additions to existing buildings, modernization, renovation, site features, paving, sidewalks/quads and school expansion projects. Each Proposal must also include evidence that the respondent is properly licensed for the scope of work for which the proposal is submitted.

Respondent shall identify and provide resumes for the key personnel that will staff the Project. Resumes shall include specific qualifications and recent related experience providing similar services for the scope of work for which the Proposal is submitted, including but not limited to: Education, Training & Professional Certifications; project experience with focus on K-12 qualifications (include school district/community college, project name, construction value, project type; and a list of references with contact names and phone numbers for at least five (5) projects with public school experience.

4. Relationship to Outside Governmental Agencies

Depending upon the project, respondent may be required to assist the District in working with various outside governmental agencies, including but not limited to, the Division of State Architect, California Geological Survey, California Dept. of Education, Dept. of Toxic Substances Control.

5. Fee Proposal

The fee proposal shall include a fixed fee not to exceed amount for services outlined in the Scope of Work noted above. Include all required insurance, reimbursable and overhead costs. Include hourly rates schedule for the firm.

6. Time for Performance

Respondent shall include a proposed schedule for performing the above-referenced services for which Respondent is submitting its Proposal.

7. Capacity

Respondent must indicate the individual or firm's proximity to the District and availability to accomplish the work for which the Proposal is submitted.

8. Sub-consultants

Respondent shall list any sub-consultants anticipated, along with their specific tasks and references.

9. Litigation History

Respondent shall list any construction-related litigation in the last five (5) years, filed either by an owner, owner's consultant, or contractor, against the individual or firm.

10. References

Respondent shall describe its work in the past five (5) years that is similar or comparable. Respondent shall provide as references a primary contact person, with current address and telephone number, for similar projects on which applicant has provided master planning services within the past three (3) years. Not all references need to be within the past three (3) years, but a reference must be provided for each project within the past three (3) years. For each reference provided, in addition to the primary contact person with current address and telephone number, Respondent shall also include the name of the district and the scope of services provided.

References may be contacted to attest to the respondent's ability to perform the described services.

11. 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.

INDEMNIFICATION

To the furthest extent permitted by California law, Respondent shall, at its sole expense, defend, indemnify, and hold harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from and against any and all demands, losses, liabilities, claims, suits, damages, costs, expenses, judgments and actions (the "Claims") of any kind, nature, and description, including, but not limited to, personal injury, bodily 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 this Agreement or from any activity, work, or thing done, permitted, or suffered by the Respondent in conjunction with this Agreement, unless the claims are caused wholly by the sole negligence or willful misconduct of the District. The District shall have the reasonable right to accept or reject any legal representation that Respondent proposes to defend the Indemnified Parties.

INSURANCE

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

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	 \$ 2,000,000 \$ 2,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	 \$ 1,000,000 \$ 1,000,000
Professional Liability	\$ 2,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 2,000,000

CRITERIA

Criteria for selection of each respondent will include the following without limitation:

1. Adherence to the specified format.
2. Completeness of the Proposal.
3. Acceptable and verifiable references.
4. Experience, professional, and technical expertise of staff.
5. Experience with similar California K12 public school construction, renovation, and/or modernization project(s) of comparable scope and complexity.
6. Experience with similar California K12 school facility master planning.

7. Availability of staffing for the Project and the level of service and support.
8. Fee requirements and cost of the services.
9. Ability to maintain positive interpersonal relationships with all the Project and school community participants.

DISTRICT'S EVALUATION PROCESS

Responses will be reviewed for responsiveness and evaluated pursuant to the above-listed objective criteria, with particular attention to, without limitation, each respondent's qualifications and demonstrated competence in providing like services. Teams which are inclusive of diversity are encouraged.

After submissions are evaluated and/or ranked, the District, at its sole discretion, may elect to interview the top proposers. The District may elect to interview one or more proposer. Adequate time will be allowed for presentation of qualifications followed by questions and answers.

If a commitment is made, it will be to the most qualified respondent(s) with whom the District is able to negotiate successfully the terms and conditions of the required agreement documents.

Final selection of a proposer, terms and conditions of any and all agreements and authority to proceed with the services for which the Proposal was submitted shall be at the discretion of the District.

The selection committee will recommend the most qualified proposer to the District's Board. After selection by the Board, District staff will issue a notice of intent to commence negotiations with the best qualified proposer.

If the District is unable to successfully negotiate a satisfactory agreement with terms and conditions the District determines to be fair and reasonable, the District may then commence negotiations with the second best qualified proposer in sequence until an agreement is reached or determination is made to reject all Proposals.

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 non-responsive, 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 RFQ/P. 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**.

ASSIGNMENT

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

PUBLIC RECORD

To the extent that the proposals submitted in response to this RFP are public records under California law, they may be released if requested by members of the public.

RFP RESPONSE SCHEDULE SUMMARY

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

DATE	EVENT	TIME DEADLINE
March 9, 2018	Release of RFP	
March 23, 2018	Pre-proposal Conference Web-Ex	10:00 a.m.
April 5, 2018	Deadline for all submissions in response to RFP.	10:00 a.m.
TBD	Interviews of short-listed Consultants.	
TBD	Notification to selected Consultants	

WE THANK YOU FOR YOUR INTEREST IN THIS EXCITING PROGRAM!

Appendix A: Form of Agreement

**INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES
Master Planning Consulting Services**

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the _____ day of _____, 20__ by and between the Berkeley Unified School District, ("District") and _____ ("Consultant"), (together, "Parties").

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** The Consultant shall provide Master Planning Consulting services as further described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services").
2. **Term.** Consultant shall commence providing services under this Agreement on _____, 20__ and will diligently perform as required and complete performance by _____, 20__, unless this Agreement is terminated and/or otherwise cancelled prior to that time.
3. **Submittal of Documents.** The Consultant shall not commence the Services under this Agreement 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 Certification
- Fingerprinting/Criminal Background Investigation Certification
- Insurance Certificates and Endorsements
- W-9 Form
- Other: _____

4. **Compensation.** District agrees to pay the Consultant for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed _____ Dollars (\$_____). District shall pay Consultant according to the following terms and conditions:

- 4.1. Payment for the Work shall be made for all undisputed amounts based upon the delivery of the work product as determined by the District. Payment shall be made within thirty (30) days after the Consultant submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made. The schedule of deliverable Services to be produced is as follows:

- 4.1.1. _____
- 4.1.2. _____
- 4.1.3. _____
- 4.1.4. _____
- 4.1.5. _____

- 4.2. If Consultant works at more than one site, Consultant shall invoice for each site

separately.

5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing services for District, except as follows:
 - 5.1. Not applicable.
6. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees. In the performance of the work herein contemplated, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.
7. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows:
 - 7.1. Not applicable.
8. **Performance of Services.**
 - 8.1. **Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.

Consultant shall carefully study and compare all documents, findings, and other instructions and shall at once report to District, in writing, any error, inconsistency, or omission that Consultant or its employees may discover. Consultant shall have responsibility for discovery of errors, inconsistencies, or omissions.
 - 8.2. **Meetings.** Consultant and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.
 - 8.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
 - 8.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall

obtain the approval of District prior to the commencement of a new project.

9. **Originality of Services.** Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.

10. **Ownership of Data.** Pursuant to Education Code section 17316, this Agreement creates a non-exclusive and perpetual license for the District to use, at its discretion, all plans including, but not limited to, record drawings, specifications, estimates and other documents that Consultant prepared or cause to be prepared pursuant to this Agreement. Consultant retains all rights to all copyrights over designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that Consultant prepares or cause to be prepared pursuant to this Agreement.

In the event the District changes or uses any fully or partially completed documents without Consultant's knowledge or participation or both, the District agrees to release Consultant of responsibility for such changes, and shall hold Consultant harmless from and against any and all claims on account of any damages or losses to property or persons, or economic losses, arising out of that change or use, unless Consultant is found to be liable in a forum of competent jurisdiction. In the event that the District uses any fully or partially completed documents without the Consultant's full involvement, the District shall remove all title blocks and other information that might identify Consultant.

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 agrees to take such actions as are necessary to protect the rights assigned to the District in this Agreement, and to refrain from taking any action that would impair those rights. Consultant's responsibilities under this Agreement include without limitation, placing proper notice of copyright on all versions of the plans and specifications. 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 five (5) 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. **For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three days after the day of mailing, whichever is sooner.
- 13.2. **For Convenience by Consultant.** Consultant may, upon sixty (60) 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 sixty (60) 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/or costs to the District exceed 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.

14. **Indemnification.** To the furthest extent permitted by California law, Consultant shall indemnify and hold harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Consultant. Consultant shall, to the furthest extent permitted by California law, defend the Indemnified Parties at Consultant's own expense, including attorneys' fees and costs, from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Consultant. 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 with minimum limits equal to the amount indicated below. Per requirements in the RFP/RFQ.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	 \$ 2,000,000 \$ 2,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	 \$ 1,000,000 \$ 1,000,000
Professional Liability	\$ 2,000,000
Workers Compensation	Statutory Limits
Employer’s Liability	\$ 2,000,000

15.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Consultant, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

15.1.2. **Workers’ Compensation and Employers’ Liability Insurance.** Workers’ Compensation Insurance and Employers’ Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers’ compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers’ Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

15.1.3. **Professional Liability (Errors and Omissions).** Professional Liability Insurance as appropriate to the Consultant’s profession, coverage to continue through completion of construction plus two (2) years thereafter.

15.2. **Proof of Carriage of Insurance.** The Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

- 15.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
- 15.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- 15.2.3. An endorsement stating that the District and its Governing Board, agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District. An endorsement shall also state that there shall be a waiver of any subrogation.
- 15.2.4. All policies except the Professional Liability, Workers' Compensation Insurance, and Employers' Liability Insurance Policies shall be written on an occurrence form.
- 15.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.
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 governing board of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Consultant observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Consultant's receipt of a written termination notice from the District.
- 17.1. **LABOR CODE REQUIREMENTS:** Consultant shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1 – 5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with the District.
- 17.1.1. **Registration:** If applicable, before a public works contract can be awarded, Consultant and its subcontractor(s) shall be registered with the Department of Industrial Relations in accordance with Labor Code section 1771.1.

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

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

18. **Certificates/Permits/Licenses/Registration.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this Agreement.

19. **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.

20. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, 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 and District policy. In addition, the Consultant agrees to require like compliance by all of its subcontractor(s).

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

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

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

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

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

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

and

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

22. **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.

23. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any way the District is entitled pursuant to applicable 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. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

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:

Berkeley Unified School District
1707 Russell Street
Berkeley, California 94703
[FAX]
ATTN: Timothy E. White

Consultant:

[NAME]

_____, California 9____
[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. **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.
28. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.
29. **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.
30. **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.
31. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
32. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
33. **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.
34. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
35. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
36. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.
37. **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.

38. 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: _____, 20__

Dated: _____, 20__

Berkeley Unified School District

By: _____

By: _____

Print Name: Pauline Follansbee

Print Name: _____

Print Title: Interim Assistant
Superintendent of Business Services

Print Title: _____

Information regarding Consultant:

License No.: _____

_____ :

Registration No.: _____

Employer Identification and/or
Social Security Number

Address: _____

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.

Telephone: _____

Facsimile: _____

E-Mail: _____

Type of Business Entity:

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

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"
DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT

Consultant's entire Proposal is **not** made part of this Agreement, it may be attached for reference.