

**REQUEST FOR QUALIFICATIONS AND PROPOSALS
FOR MEASURE G BOND PROGRAM
ENVIRONMENTAL CONSULTING SERVICES**

NOTICE IS HEREBY GIVEN that Berkeley Unified School District ("District") is requesting qualified persons, firms, partnerships, corporations, associations, or professional organizations to enter into agreements with the District to provide the services necessary to assure that their Measure G Bond Program ("Program") and Specific Bond Projects ("Project(s)") comply with the requirements of the California Environmental Quality Act ("CEQA").

Respondents to this RFQ should mail or deliver five (5) copies and one (1) electronic copy on CD, DVD, Flashdrive or via email to johncalise@berkeley.net and copy maria@k12schoolfacilities.org of their proposals to:

**JOHN CALISE, EXECUTIVE DIRECTOR OF FACILITIES
BERKELEY UNIFIED SCHOOL DISTRICT
1720 Oregon Street
Berkeley, CA 94703
(510) 644-6066**

All responses are due by 2:00 p.m., on THURSDAY, OCTOBER 15, 2020.

Each submittal must conform and be responsive to the requirements set forth in this RFQ.

The District reserves the right to waive any informalities or irregularities in received submittals. Further, the District reserves the right to reject any and all submittals. The District retains the sole discretion to determine whether a respondent is responsive and qualified.

If you have any questions regarding this RFQ please email johncalise@berkeley.net and copy maria@k12schoolfacilities.org before 5:00 p.m. on October 8, 2020. Questions must be submitted in writing.

A preproposal meeting will be held on October 1, 2020 at 1:00 pm via Zoom

Join Zoom Meeting <https://zoom.us/j/92795010301>

Meeting ID: 927 9501 0301 One tap mobile +16699006833,,92795010301# US (San Jose) +13462487799,,92795010301# US (Houston).

The District may, at its discretion, interview some of the respondents.

This RFQ is not a formal request for bids, nor an offer by the District to contract with any party responding to this RFQ. The District reserves the right to reject any and all responses. The District also reserves the right to amend this RFQ as necessary. All materials submitted to the District in response to this RFQ shall remain property of the District.

REQUEST FOR QUALIFICATIONS AND PROPOSALS (ENVIRONMENTAL CONSULTING SERVICES)

BACKGROUND

Berkeley Unified School District ("District") is seeking Statements of Qualifications ("SOQ") and Proposals from experienced entities to provide environmental and CEQA consulting services ("Services") for selected projects ("Project(s)") for its bond program ("Program").

This RFQ defines the Services sought by the District and generally outlines the requirements for the various Projects. Briefly stated, the District is seeking experienced and proven CEQA consultants to provide guidance to the District for the Program and for each project.

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. In March 2020 the citizens of Berkeley approved \$380 million Measure G Facilities Bond.

It is anticipated that the District will act as the "lead agency" for appropriate CEQA clearance and certifications, and it is important that all environmental issues be assessed, and if necessary, addressed in an appropriate Environmental Impact Report or other documents.

The District invites any qualified firm ("Firm") to submit qualifications related to its ability to provide the Services necessary to obtain environmental clearance and entitlement to construct the Program Projects. In general, the Firm(s) selected as a result of this process will be placed in a pool of qualified firms for future consideration to provide Services for certain Projects, and to thereafter work cooperatively with the District Board, staff, and consultants, the architect of record and design team, and the Project inspectors, to facilitate the timely completion of any Project(s) assigned.

DESCRIPTION OF PROJECT(S)

The Projects for which the District is seeking related environmental consulting services consists of:

Parking Structure
Solar
Theater Renovation
Seismic Upgrade
Landscape Architecture
Modernization

Measure G Bond information: <https://www.berkeleyschools.net/2020-bond/>

DESCRIPTION OF DISTRICT NEEDS

Firms will be selected based on qualifications and demonstrated competence in providing environmental consulting services that may include, but not be limited to, the following:

**Berkeley Unified School District
RFQ Environmental Consulting Services**

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Preparation of all documentation necessary to initiate, process, review, and ultimately obtain certification of a Project Environmental Impact Report or other appropriate environmental documentation (i.e. "Negative Declaration", "Mitigated Negative Declaration", Categorical or Statutory Exemption, etc.) that will environmentally clear approval and implementation of the Project in compliance with CEQA. Such documentation will include an initial study, notices, mailings, technical reports, exhibits, the Draft and Final EIR (if necessary), findings, approval documents and other documentation, and studies, as required to complete the CEQA process.

Services will likely include, but are not limited to, the following:

- a) Conduct appropriate scoping activities to identify issues and define the proposed project and alternatives for analysis; meet on an ongoing basis as appropriate with community and affected agency representatives, district administrators, master planners, and associated consultants already under contract at the District; prepare, maintain and implement a CEQA processing schedule to assure efficient and timely preparation and processing of the appropriate environmental clearance, and if necessary, the EIR.
- b) Prepare and distribute the initial study and notice of preparation;
- c) Prepare Administrative Draft environmental documents;
- d) Prepare and circulate draft environmental document;
- e) Conduct public hearings and meetings, as required;
- f) Prepare administrative environmental impact report document;
- g) Present draft and final report to the Board; and
- h) Prepare the Final EIR with responses to comments, findings of fact and statement of overriding considerations (if applicable), mitigation monitoring program, certifying resolution, notice of determination and related documentation.

The District may assign all or parts of the work described above to one or more of the successful firm(s).

Schedule

The District is requiring immediate assistance to meet the time-sensitive schedules. Major construction projects will start in 2022.

REQUIRED INFORMATION AND FORMAT

Firms responding to this RFQ must comply with the following format requirements. Material must be in 8-1/2 x 11 inch format. Submittals shall include divider tabs labeled with boldface headers below; e.g. the first tab would be entitled "Cover Letter", the second tab would be entitled "Table of Contents", etc. Provide five bound copies.

Provide five (5) bound copies and one (1) electronic copy of the SOQ.

- The electronic copy will only be accepted via flash drive, CD or email johncalise@berkeley.net and copy maria@k12schoolfacilities.org in the following programs: Microsoft Office Suite or PDF.

1. Cover Letter. [**Not to exceed one (1) page.**]

A letter of introduction signed by an authorized officer of the organization not to exceed one (1) page:

- a. If submitting as a team, note which team is the prime consultant or lead joint venture partner (if applicable).
- b. Note the individual who will be responsible for leading the effort.
- c. Respondent shall sign and add the following language: "By virtue of submission of this Statement of Qualifications, [INSERT FIRM'S NAME] declares that all information provided is true and correct."

2. Table of Contents.

3. Firm Information.

- a. Name, address, telephone, fax, website, name of main contact, Federal Tax I.D. number, license and/or registration number.
- b. A brief history of the Firm submitting a proposal in response to this RFQ. Please include any former names of the Firm and the number of years the Firm has provided environmental consulting services.
- c. Type of organization or company structure, including an organizational chart of the Firm, and description of its structure.
- d. Resumes of personnel to be involved with providing environmental consulting services related to the Project(s) should be included. Upon engagement, any change in personnel must be approved by the District and the Firm shall be responsible for any additional costs related to said change in personnel.
- e. Provide a letter from your insurance company indicating insurance limits.
- f. Location of nearest local office and main office, if different.

4. Relevant Qualifications. [**Not to exceed ten (10) pages.**]

A statement of consultant qualifications. Using as a minimum the following criteria, the individual or firm should state why it believes it is qualified to provide the services requested in the RFQ:

- a. Certification that the environmental consultancy firm is legally permitted or licensed to conduct business in the State of California for the services offered.
- b. Number of years the firm has been in business.

- c. Location of principal office that will be responsible for the implementation of the scope of work awarded by the District.
 - d. Qualifications of firm.
 - e. Strength of staff: Include resumes of key person(s).
 - f. Evidence of Insurance Coverage.
5. Relevant Experience and Capabilities. [**Not to exceed twelve (12) pages.**]
- a. Provide a list of at least three (3) references; include names organization, job title, addresses, and phone numbers
 - b. Description of the Firm's experience with respect to providing environmental consulting services to schools and/or community colleges over the past five (5) years.
 - c. Provide information about prior services/designs prepared by your firm in the last ten (10) years on at least five (5) and no more than fifteen (15) educational projects or other related projects. Include the name of projects, client contact, city, and state.
 - d. Description of the Firm's experience in providing public/neighborhood outreach in connection with school and/or community college projects and/or parking structure projects. Please provide specific examples.
 - e. Detail your firm's or team's ability to accomplish the requested scope of services in a comprehensive and thorough manner, including aggressive scheduling in order to meet a client's goal of moving projects into construction within the earliest possible timeframe, in compliance with CEQA.

6. Litigation History.

The firm or firms must have an acceptable history of working proactively to avoid litigation. Provide specific information on termination for default; litigation pending, settled, or judgments entered within the last five (5) years; and civil judgments or criminal convictions for false claims with the last five (5) years.

7. Fee Schedule.

Include a current hourly-based or task-based fee schedule for the types of service that Firm offers that will be used for performance of Services. Include typical staffing expectations, professional fee schedules, and variations that the District could expect for specific Services, if applicable.

Provide a fee schedule/rate sheet including your Firm's hourly billing rates by position and information regarding reimbursable items.

A form of the Agreement for professional services has been distributed with this RFQ as Appendix "A." The District intends to select Firms from the Pool of Qualified

Applicants in order to assign Projects. The final form of the Agreement will incorporate a final scope of work and not-to-exceed fee negotiated between the District and the selected Firm.

8. Acknowledgment of Form of Contract.

A copy of the District's form agreement ("Agreement") is attached to this RFQ as Appendix "A." Firms must thoroughly review the contract included herewith and must identify any term or condition of the contract that the Firm requests modifying or deleting or if the Firm is proposing to add new provisions. Firms must set forth a clear explanation of what modification would be sought and specific alternate language. The District will review but is not obligated to accept any proposed changes. ***Any proposed changes to the form of Agreement not identified in this section of the SOQ will not be entertained after the selection process is complete.***

LIMITATIONS

The District reserves the right to contract with any entity responding to this RFQ. The District makes no representation that participation in the RFQ process will lead to an award of an agreement for environmental consulting services or any consideration whatsoever. The District shall in no event be responsible for the cost of preparing any SOQ in response to this RFQ. The awarding of an agreement for environmental consulting services, if at all, is at the sole discretion of the District.

RESTRICTIONS ON LOBBYING AND CONTACTS

From the period beginning on the date of the issuance of this RFQ and ending on the date of the award of an agreement for environmental consulting services, no person, or entity submitting a response to this RFQ, 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, the evaluation or selection process/or the award of the agreement for environmental consulting services with any member of the District, Board, selection members, or any member of a District committee. Any such contact shall be grounds for the disqualification of the Firm.

DISTRICT'S EVALUATION PROCESS

Please note that, to the extent that the submittals are public records under California law, the submittals may be released to the public if requested by members of the public. The scoring by the District will not be released and is not subject to public records request.

SOQs will be reviewed for responsiveness and evaluated pursuant to objective criteria, with particular attention to, without limitation, each respondent's qualifications and demonstrated competence in providing like services. The District reserves the right to waive any informality or irregularity in any submittal received, to reject any or all submittals, to re-solicit for submittals, and to accept the submittal which, in its sole judgment, is most advantageous to the District and in the District's best interest.

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

Final selection of a Firm or Firms into the Pool of Qualified Applicants shall be at the discretion of the District.

DISTRICT INVESTIGATIONS

The District may perform investigations of responding parties that extend beyond contacting the references identified in the SOQ. The District may request a firm to submit additional information pertinent to the review process. The District also reserves the right to investigate and rely upon information from other available sources in addition to any documents or information submitted.

POOL OF QUALIFIED APPLICANTS

The District will maintain the pool of qualified applicants for the duration of the Program. Requests for re-certification may be sent every 2 years. Firms who do not reply to the request for re-certification may be deleted from the pool of pre-qualified firms, at the sole discretion of the District. Additional firms can be added as the District determines the need for additional services.

FINAL DETERMINATION AND AWARD

The District reserves the right to contract with any entity responding to this RFQ for all or any portion of the work described herein and/or in an Agreement offered to the entity, to reject any SOQ as non-responsive, and/or not to contract with any architectural services firm for the services described herein. The District makes no representation that participation in the RFQ process will lead to an award of contract or any consideration whatsoever. The District reserves the right to contract with any firm not participating in this process. The District shall in no event be responsible for the cost of preparing any SOQ or proposal in response to this RFQ, including any supporting materials.

The awarding of a contract(s) is at the sole discretion of the District. The District may, at its option, determine to award contract(s) only for portions of the scope of work identified herein. In such case, the successful firm(s) 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 firm responding to this RFQ.

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RFQ RESPONSE SCHEDULE SUMMARY:

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

DATE	EVENT	TIME DEADLINE
September 21, 2020	Release and advertisement of RFQ.	
October 1, 2020	Pre-proposal conference. Join Zoom Meeting https://zoom.us/j/92795010301	1:00 pm
October 8, 2020	Deadline for submission of written questions to District concerning RFQ.	5:00 pm
October 15, 2020	Deadline for all submissions in response to RFQ.	2:00 pm
TBD	If required, release of short-listed firms selected to interview.	
TBD	Interviews of short-listed firms if determined by the District that interviews are required.	
TBD	Notification to firms selected for the pool of qualified firms.	

WE THANK YOU FOR YOUR INTEREST IN THIS EXCITING OPPORTUNITY!

Appendix A: Form of Agreement

**INDEPENDENT CONSULTANT AGREEMENT FOR
CEQA CONSULTING SERVICES**

This Independent Consultant Agreement for CEQA Consulting Services ("Agreement") is made and entered into as of the _____ day of _____, 2020 by and between the Berkeley Unified School District ("District") and _____ ("Consultant") (together, "Parties").

WHEREAS, Government Code section 4526, authorizes the District to contract with and employ any person(s) for the furnishing of architecture, landscape architecture, environmental, engineering, land surveying, and construction project management services on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required; and

WHEREAS, the District duly determined that it needs some or all of the services (collectively, "Services") to be provided pursuant to this Agreement; and

WHEREAS, the Consultant is trained, experienced, and competent to perform the Services required by the District, as needed on the basis set forth in this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** Consultant shall provide California Environmental Quality Act (CEQA) compliance 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.** Consultant shall not commence the Services under this Agreement until Consultant has submitted and District has approved the documents, certificates, and endorsements 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 Consultant for services satisfactorily rendered pursuant to this Agreement on a time-and-materials basis at the District's direction per the Hourly Billing Rates in **Exhibit "B,"** a total fee not to exceed _____ and 00/100 Dollars (\$). District shall pay Consultant according to the following terms and conditions:
 - 4.1. Payment for the Services shall be made for all undisputed amounts based upon the delivery of the work product as determined by District. Payment shall be made within thirty (30) days after Consultant submits an invoice to District for Services actually completed and after District's written approval of the Services, or the portion of the Services for which payment is to be made.

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. _____.

6. **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.

7. **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 District, and are not entitled to benefits of any kind or nature normally provided to employees of District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' 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.

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 District and shall be subject to 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 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. **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 District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.
11. **Disputes.** In the event of a dispute between the parties as to performance of the Services, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute in good faith. Pending resolution of the dispute, Consultant agrees it will neither rescind the Agreement nor stop the performance of the Services, but will allow determination by the court of the State of California, in the county in which District's administration office is located, having competent jurisdiction of the dispute. Disputes may be determined by mediation if mutually agreeable, otherwise by litigation. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, Consultant shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to Consultant's right to bring a civil action against District. For purposes of those provisions, the running of the time within which a claim must be presented to District shall be tolled from the time Consultant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

12. Termination.

- 12.1. **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 Consultant or no later than three (3) calendar days after the day of mailing, whichever is sooner.
- 12.2. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
 - 12.2.1. material violation of this Agreement by Consultant; or
 - 12.2.2. any act by Consultant exposing District to liability to others for personal injury or property damage.

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, District may secure the required services from another Consultant. If the expense, fees, and/or costs to District exceed the cost of providing the service pursuant to this Agreement, Consultant shall immediately pay the excess expense, fees, and/or costs to District upon the receipt of 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.

13. Indemnification.

- 13.1. To the furthest extent permitted by California law, Consultant shall defend, indemnify, and hold free and harmless District, its agents, representatives, officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, including without limitation the payment of defense costs incurred by District ("claim"), to the extent caused by the negligence, recklessness, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services or from any activity, work, or thing done, permitted, or suffered by the Consultant in conjunction with this Agreement. District shall have the right to accept or reject any legal representation that Consultant proposes to defend the indemnified parties.
- 13.2. Consultant shall pay and satisfy any judgment, award, or decree that may be rendered against the Indemnified Parties in any Claim. Consultant's obligation pursuant to this Article includes reimbursing the District for the cost of any settlement paid by the Indemnified Parties and for any and all fees and costs, including but not limited to legal fees and costs, expert witness fees, and consultant fees, incurred by the Indemnified Parties in the defense of any Claim(s) and to enforce the indemnity herein. Consultant's obligation to indemnify shall not be restricted to insurance proceeds.
- 13.3. District may withhold any and all costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant from amounts owing to Consultant.

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14. Insurance.

14.1. **Coverage.** Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

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

14.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect Consultant, 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 District.)

14.1.2. **Workers' Compensation and Employer's Liability Insurance.** Workers' Compensation Insurance and Employer's 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, 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.

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

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

14.2.1. 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 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."

14.2.2. 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.

14.2.3. An endorsement stating that 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 Employer's 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.

14.2.4. All policies except the Professional Liability, Workers' Compensation, and Employer's Liability Insurance Policies shall be written on an occurrence form.

14.3. **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 District.

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

16. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of 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 Services as indicated or specified. If Consultant observes that any of the Services required by this Agreement are at variance with any such laws, ordinance, rules or regulations, Consultant shall notify District, in writing, and, at the sole option of District, any necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Consultant's receipt of a written termination notice from District.

17. **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.

18. **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.

19. **Anti-Discrimination.** It is the policy of 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 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, Consultant agrees to require like compliance by all of its subcontractor(s).

20. **Fingerprinting of Employees.** Consultant shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. Consultant shall not permit any employee to have any contact with District pupils

until such time as Consultant has verified in writing to the governing board of District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. Consultant's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by District, or acting as independent contractors of Consultant. Verification of compliance with this section shall be provided in writing to District prior to each individual's commencement of employment or performing any portion of the Services and prior to permitting contact with any student.

21. **Safety and Security.** Consultant is responsible for maintaining safety in the performance of this Agreement. Consultant shall be responsible to ascertain from District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
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.** District may evaluate Consultant in any way District is entitled pursuant to applicable law. District's evaluation may include, without limitation:
 - 23.1. Requesting that District employee(s) evaluate Consultant and 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.** 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
1720 Oregon St.
Berkeley, CA 94703
Fax: (510) 644-6066
ATTN: John Calise, Executive Director of
Facilities

Consultant:

[NAME]

[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) calendar 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 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’s 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 authority 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.

[SIGNATURES ON FOLLOWING PAGE]

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

Dated: _____, 20__

Dated: _____, 20__

Berkeley Unified School District

[NAME]

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Information regarding Consultant:

License No.: _____

Employer Identification and/or
Social Security Number

Registration No.: _____

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, District requires 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: _____

EXHIBIT "A"

DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT

Consultant's entire Proposal is **not** made part of this Agreement.

Consultant must provide, at a minimum, the full scope of services set forth below:

- Prepare all studies and documentation necessary to initiate, process, review, and ultimately obtain certification of a Project Environmental Impact Report or other appropriate environmental documentation (e.g. Negative Declaration) and all required permits that will environmentally-clear approval and implementation of the Project in compliance with CEQA and all applicable environmental requirements, including but not limited to CEQA and all applicable environmental laws, regulations, and requirements emanating from the Environmental Protection Agency ("EPA"), Cal/EPA, Air Quality Management District, State of California and Regional Water Quality Control Board, California Department of Transportation ("CalTrans"), California Department of Fish & Game, and other local agencies as applicable. These include without limitation permits required by the Santa Ana Regional Water Quality Control Board, utility companies, state and local fire marshals, CalTrans, California Department of Fish and Game, and other local agencies. Such documentation will include an initial study, notices, mailings, technical reports, exhibits, the Draft and Final EIR (if necessary), findings, approval documents, mitigation monitoring plan, and other documentation, and studies, as required to complete the CEQA process. Services will likely include, but are not limited to, the following:
 - Conduct appropriate scoping activities to identify issues and define the proposed Project and alternatives for analysis; meet on an ongoing basis as appropriate with community and affected agency representatives, district administrators, master planners, and associated consultants already under contract at District; prepare, maintain and implement a CEQA processing schedule to assure efficient and timely preparation and processing of the appropriate environmental clearance, and if necessary, the EIR;
 - Prepare and distribute the initial study and notice of preparation;
 - Prepare administrative draft environmental documents;
 - Prepare and circulate draft environmental documents;
 - Assist in conducting public hearings and meetings, as required;
 - Prepare administrative EIR document;
 - Present draft and final report to the Board; and
 - Prepare the Final EIR with responses to comments, findings of fact and statement of overriding considerations (if applicable), mitigation monitoring program, certifying resolution, notice of determination and related documentation.
- Ensure that the District fully complies with CEQA with respect to the Project, including, without limitation, all procedural requirements and notices as part of the CEQA process for a public school project.

- Respond to responsible agency and public comments concerning the environmental impacts of the Project.
- Attend and participate in any public hearings.
- Serve as District's advisor for the Project with regard to compliance with all laws and regulations concerning the environment which are applicable to the acquisition or expansion of a public school site and the construction of a public school or public school facilities, including without limitation, Public Resources Code section 21000 et seq., Government Code section 65402, and Education Code section 17210 et seq. Consultant shall coordinate its work with the District's other consultants, without limitation, including any Environmental Assessor retained by the District. In addition, the Consultant may be requested to prepare or assist the District with preparing a report to be utilized at a public hearing in furtherance of Education Code section 17211.

EXHIBIT "B"

HOURLY BILLING RATES

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:

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.

- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his 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 Services of this Agreement.

Date: _____
Proper Name of Consultant: _____
Signature: _____
Print Name: _____
Title: _____

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Services under this Agreement.)

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

One of the four 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, who is not a sole proprietor, 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."

- The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Consultant's services under this Agreement and Consultant, who is not a sole proprietor, certifies its intent to comply with the fingerprinting requirements of Education Code section 45125.1(k) with respect to all Contractor's employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and hereby agrees to the District's preparation and submission of fingerprints such that the California Department of Justice may determine that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. No work shall commence until such determination by DOJ has been made.

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 and undertake to prepare and submit Contractor's fingerprints as if he or she was an employee of the District.

Date: _____

District Representative's Name and Title: _____

District Representative's Signature: _____

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: _____