

**REQUEST FOR STATEMENT OF QUALIFICATIONS (RFSOQ), REQUEST FOR
PROPOSALS (RFP) AND SEALED RATE SCHEDULES (SRS)**

FOR THE

OXNARD UNION HIGH SCHOOL DISTRICT

RFP: 621

**AS-NEEDED SPECIAL INSPECTION AND MATERIAL TESTING SERVICES
FOR NEW DEL SOL HIGH SCHOOL CONSTRUCTION PROJECT FOR THE
OXNARD UNION HIGH SCHOOL DISTRICT**



OXNARD UNION HIGH SCHOOL DISTRICT

BID Due Date: 2:00 p.m. June 10th, 2020

Submit Bids to: Oxnard Union High School District
309 South K Street, Building G
Purchasing Department
Oxnard, CA 93030
Attention: Deanna Rantz

OXNARD UNION HIGH SCHOOL DISTRICT

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SECTION I – OVERVIEW OF PROCESS

A. BACKGROUND

The DISTRICT performs various new construction and utility infrastructure projects such as underground utilities improvements (e.g. structural steel, CMU, Cast-place concrete,, framing, HVAC, electrical, sewer, water, and storm) and facilities expansion and improvements (e.g. playground improvements, pavement management, streetscapes, transportation, buildings) to ensure the continued reliability of the DISTRICT infrastructure and facilities system. The work normally consists of trench excavation; removal and replacement of existing aging underground utilities and facilities; backfilling and compaction; pavement restoration and other related construction activities that require as needed special inspection such as geotechnical inspection and material testing services and other type of special inspection to ensure reliability of the DISTRICT’S utility infrastructure, buildings and facilities system.

B. PURPOSE OF THIS RFSOQ/RFP

The purpose of this document is to facilitate the selection of a qualified consulting firm(s) to perform as needed geotechnical inspection, material testing services, other minor types of special inspections, and construction support for OXNARD UNION HIGH SCHOOL DISTRICT’S various utility infrastructure, buildings and facilities projects.

The RFSOQ allows the DISTRICT to select and add additional qualified special inspection and material testing firms to the DISTRICT’S Consultant List. If your firm wishes to be considered for the list (POOL) you may submit for evaluation.

Consultants are urged to submit concise proposals appropriate to DISTRICT’S requirements. The Fee Proposal shall be submitted in a separate sealed envelope marked “Fee Proposal” for “As Needed Special Inspection and Material Testing Services”.

The OXNARD UNION HIGH SCHOOL DISTRICT reserves the right to reject any or all responses received as a result of this solicitation; to extend the submission due date; to modify, amend, reissue or rewrite this document; and to procure any or all services by other means.

C. SCOPE OF SERVICES

The scope of services described herein is the minimum necessary to meet the OXNARD UNION HIGH SCHOOL DISTRICT'S objectives. The consultant is expected to expand on the scope by incorporating their expertise and proposed method of approach.

The scope of services shall include, but are not limited to:

1. As needed major Geotechnical Inspection and material testing services.
 - a. Perform a laboratory material acceptance standard test, which includes a gradation test, compaction curve, R-Value test, sand equivalent test, and durability index test.
 - b. Perform field observation/field density compaction testing services (nuclear gauge) and material testing services as requested, and on an intermittent basis in compliance with the project plans and specifications.
 - c. Document test data and observations through daily and end-of-job summary reports. Daily reports shall be submitted to the DISTRICT daily. Daily reports should describe the activities performed at the time of field services, and the locations and results of the nuclear field density tests and other material testing performed. All report writing and office supervision expenses will also be included in the hourly rate.
2. As needed other Special Inspection and material testing services.
 - a. Perform other as needed special inspection and material testing services such as asphalt concrete pavement inspection, steel, rebar, masonry and onsite and plant cement concrete inspection, welding inspection, pile driving inspections and other as needed type of special inspection and material testing services.
 - b. Perform sampling of cast concrete cylindrical specimens, test for concrete compressive strength; and shotcrete production core sampling and testing per ASTM Standards.
 - c. Welding inspections of a Certified Welding Inspector (CWI), Non-Destructive Testing (NDT), Ultrasound Testing and Magnetic Particle Testing (UT-MT) Inspector certified by the American Welding Society (AWS).
 - d. Structural Steel Bolting per American Institute of Steel Construction (AISC) Standards.

- e. Document test data and observations through daily and end-of-job summary reports. Daily reports shall be submitted to the DISTRICT daily. Daily reports should describe the activities performed at the time of field services. All report writing and office supervision expenses will also be included in the hourly rate. End-of job summary closeout report to be provided to DISTRICT in addition to DSA requirements.
- 3. Provide a fee proposal rates based on the following scope for a three (3) year contract period to perform the above-mentioned services as requested, and on an intermittent basis in compliance with the approved DSA project plans and specifications. Testing lab fees and rates will be an added cost. Your Sealed Rate sheet on applies.**
- a. **All expenses will be included in the proposed hourly rate, considering two (2) Hours minimum charge per day.**
 - b. The estimated service hours mentioned above are actual on-the-job time. Therefore, your proposed hourly rate must also be based on actual hours spent in the field for two (2) hours minimum charge per day, regardless of the number of tests performed and site visits requested per day. This hourly rate shall include labor, reporting (preparation and delivery of testing reports), travel, sampling, sample pick-up, core sampling technical supervision, testing equipment taxes, insurance and all other incidental charges. (i.e., there should be no separate hourly rate or mileage charged for inspectors travel time to and from the job site.)
 - c. Actual field and laboratory services shall be on an “as-needed” basis and will be determined by the DSA Representative and DISTRICT, during construction.
 - d. Any additional hours shall be negotiated based on rates provided with the RFP.
- 4. The work shall be performed by qualified personnel with valid professional licenses and certifications. Copies of licenses and certifications shall be provided to DISTRICT for verification.**

D. CONSULTANT SELECTION MASTER SCHEDULE

A following schedule has been established for conducting this consultant selection process. The DISTRICT reserves the right, however, to modify this schedule at any time.

<u>Task</u>	<u>Dates</u>
Issuance of Request for Proposal	05/10/2020 & 5/17/2020
Bidders last Request for Clarification	5/27/2020 at 2:00 p.m.
Bid Due Date	06/10/2020 at 2:00 p.m.
DISTRICT to review and select proposals	06/10/2020 Through 06/15/2020
Board Award	06/24/2020
Execution of Consultant Contract(s)	07/08/2020
Tentative Execution of Work	11/01/2020

E. QUESTIONS AND INQUIRIES

Questions regarding the information contained in the RFSOQ/RFP document must be submitted in writing, by E-mail to the following location:

Project Contact: Karl Aldridge Project Manager for OXNARD UNION HIGH School DISTRICT. Contact Info: Kaldridge@bernards.com or 805-504-6147.

All questions shall be copied to Brittany Villasenor at Bvillasenor@bernards.com Carl Magness at cmagness@bernards.com

The District contact, Deanna Rantz should be copied at Deanna.Rantz@oxnardunion.org

DISTRICT authorized persons are to receive or respond to questions or comments. All questions must be received by 2:00pm on (Date) **Wednesday, May 27th, 2020.** Questions will be responded to in writing. Written summaries of all questions and answers will be distributed to each consultant. Anonymity of the source of specific written questions will be maintained in the written responses. A clarification addendum will be issued, if necessary.

Telephone requests for information or inquiries will be allowed only if the nature of the request or inquiry does not lend itself to formulation into a written question. Verbal inquiries, however, are discouraged and calling parties may be requested to submit written questions in lieu of receiving a verbal response. The intent behind this requirement is to ensure that consultants have available to them the same information and no inconsistent, incomplete or misinformation is communicated to any team.

F. DELIVERY OF RESPONSES

All responses to this RFSOQ/RFP must be hand delivered and received by Deanna Rantz, for the Oxnard Union High School District 309 South K Street, Building G Purchasing Department Oxnard, CA 93030 **on or before 2:00pm** on (Date) **Wednesday, June 10th, 2020**. Proposals received after the stated deadline will not be accepted. Advance submittals are permitted.

OXNARD UNION HIGH SCHOOL DISTRICT'S REPRESENTATIVE business hours are 7:00 AM - 4:00 PM Monday through Friday, except observed legal holidays. The DISTRICT will not be liable for any costs incurred by the consulting firms' incidentals to the preparation of proposals or for developing and carrying out interview presentations.

One (1) electronic copy and three (3) hard copies of the Proposal Response materials shall be submitted in accordance with all requirements set forth in this RFSOQ/RFP document. Clearly mark the submittals as follows:

RFSOQ/P 621 AS-NEEDED SPECIAL INSPECTION AND MATERIAL TESTING SERVICES FOR NEW DEL SOL HIGH SCHOOL CONSTRUCTION PROJECT FOR THE OXNARD UNION HIGH SCHOOL DISTRICT

Submission of a proposal indicates acceptance by the firm of the conditions contained in this Request for Proposals and Sealed Fee unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the OXNARD UNION HIGH SCHOOL DISTRICT and the firm selected.

G. SELECTION PROCESS

DISTRICT staff will evaluate the proposals submitted and rank each firm's proposal. Based on this evaluation, the DISTRICT "may" choose to invite up to three (3) firms to participate in an oral presentation/interview session or select the firm based on the results from the evaluation of the proposal.

At the conclusion of the evaluation and ranking (or if a best-qualified firm is selected without the need for an oral presentation), the DISTRICT will enter into contract negotiations with the top-ranking firm(s). If negotiations with the top-ranking firm(s) are unsuccessful, negotiations will terminate, and the DISTRICT will undertake negotiations with the second-rank firm(s). Based on the current project needs and proposals received, the DISTRICT may also choose to contract with multiple consulting firms. DISTRICT staff will make recommendations to the DISTRICT BOARD, which reserve the right to reject any or all proposals. The selection process will be completed when a contract is executed.

Furthermore, the OXNARD UNION HIGH SCHOOL DISTRICT reserves the right to reject any or all proposals, and to waive any and all irregularities to choose the firm which, in the DISTRICT'S opinion, best serves the DISTRICT'S interests. The DISTRICT will not be liable for any costs incurred by the consulting firms' incidentals to the preparation of proposals or for developing and carrying out interview presentations.

SECTION II - SUBMITTAL REQUIREMENTS

A. MANDATORY RFSOQ SUBMITTAL MATERIALS

Proposal shall include, please address the points below in the RFSOQ. Brief responses are acceptable and encouraged.

- 1) Date of Submittal
- 2) Firm's structure, background, general qualifications, include employee count by title and profession, year firm was established
- 3) How to deliver successful, high quality projects while working with low bid contractors, including quality control
- 4) Please attach individual resumes, with relevant experience working with public entities, specific role and responsibility, number of similar projects completed within the last 5 years. Also include the primary point of contact's name, address, telephone number and email address, as well as an alternate point of contact for each qualification submitted
- 5) Firm's current work load and backlog
- 6) Recent experience of the firm in providing services for representative projects identify costs and project complexities that distinguishes your firm's services. Provide the name, address and phone number for owner/client, contractor, operator/facilities manager, or other person that may serve as references
- 7) Sub-consultants that would be utilized and their specific role. Include firm qualifications
- 8) Location of the office(s) where work will be performed. Professional license and registration to practice specific discipline in the State of California
- 9) Please identify any recent or pending litigation
- 10) Confirmation that the required City, State and DSA standard /insurance levels are acceptable

All submittals shall be in an 8 ½ x 11' format. Foldout 11 x 17" pages may be used to exhibit projects. All submittals must have an executive summary, numbered pages, tabbed and a table of contents. Responses must be numerically identified to correspond to each request itemized below.

Candidate firms will be selected based on professional qualifications and demonstrated competence.

Statements of Qualifications shall be typed and shall not exceed thirty (30) pages of written material not including the cover letter. Submittals failing to comply with the page limitation will not be considered. The thirty (30) page limitation includes any photographic or graphic material contained in the body of the statement and any appendices. The limitation does not include:

- The cover (although narrative on the reverse side of the front cover or front of the back cover will be counted);
- A title page;
- A table of contents and/or index; or
- Blank tab pages

RFSOQ Submittals shall not include proposed fee or compensation amounts.

B. MANDATORY RFP SUBMITTAL MATERIALS

Each RFP response shall be 8-1/2" x 11" vertical format for written materials and 11" x 17" horizontal format for drawings, consisting only of the specified materials requested below. Submit one (1) electronic copy and six (3) hard copies of each bound document, in a spiral bound soft cover. Do not submit in a loose leaf, 3-ring binder or other hard cover binder. In the event the DISTRICT chooses to conduct interviews as part of the selection process, presentation boards may be used in the interview/presentation. Presentation boards shall be 30" x 42", unframed with appropriate scale and identification. Copies of all presentation boards shall be reduced to 11" x 17" paper size and included in the submittal in the numbers of copies indicated above. Electronic and slide presentations will be permitted; however, any materials so presented must be included in the written RFP submittal response. To be responsive, each RFP submission must include only the following information in the format indicated. The submittals shall be tabbed in separate sections to match the following categories. Submittals not organized according to the following format may be rejected.

1. **Cover Letter.** The cover letter shall be signed by an officer of the engineering firm or joint venture or by another person with authority to act on behalf of and bind the entity. Indicate contact person for the project.
2. **Table of Contents.**
3. **Executive Summary.** Provide a summary of the submittal.
4. **Scope of Services.** The narrative should include a description of the company's scope of services to be provided.
5. **Company's Key Features and Structures.** Include a narrative statement articulating all major company's key features and structures including which labs will be used for laboratory testing and whether they are Caltrans certified as well as the company's Quality Assurance Program
6. **Key Members.** Include a description of the key members of the firm and the organizational structure. Highlight which team member have experience with projects with Caltrans oversight and the extent of that experience. Identify team members that are Caltrans certified for material sampling and testing.

7. **Hour Allocations.** Consultant shall provide an estimate and guaranteed availability of staff of the required personnel hours by task and job title in the proposal for the tasks described in the scope of services. This information is not meant as a fee proposal, but only an indication of the level of effort envisioned for completion of the project at hand.
8. **Schedule of Charges.** This should be the schedule of charges for (2) hours minimum charge per inspection for the entire three (3) years contract period including all the other laboratory material testing services to be performed.

C. SEALED RATE SCHEDULES

Another copy of the same Hour Allocations noted above, but with proposed hourly rates listed, shall also be prepared and submitted in a sealed envelope together with the proposal. The sealed "Fee Proposal" is considered confidential and will be used for contract negotiations only.

SECTION III - EVALUATION OF RESPONSES

A. SUMMARY OF EVALUATION PROCESS

OXNARD UNION HIGH SCHOOL DISTRICT STAFF AND REPRESENTATIVES (BERNARDS) will evaluate the proposals based upon the proposal's effectiveness and efficiency in supporting each of the following items:

- Overall responsiveness to the Request for Proposals
- Qualifications, experience and commitment of the Project Manager and team.
- Firm (and project team) qualifications, experience and referenced projects.
- Effectiveness of team effort.
- Understanding of proposed scope of services.
- Project management plan and schedule.
- Ability to sign the District's Standard Professional Services Agreement.

Each candidate submitting a response to this Request for Proposals and Fee acknowledges and agrees that the preparation of all materials for submittal to the DISTRICT and all presentations, related costs and travel expenses are at the candidate's sole expense and the DISTRICT shall not, under any circumstances, be responsible for any cost or expense incurred by the candidate. In addition, each candidate acknowledges and agrees that all documentation and/or materials submitted with in response to this request shall remain the property of the DISTRICT.

SECTION IV – LIST OF EXHIBITS

All candidates on the shortlist of firms selected will be asked to certify that they will execute a contract with the OXNARD UNION HIGH SCHOOL DISTRICT with no exceptions or additions.

- Exhibit “A” Sample Standard OUHSD Consultant Agreement is included with this RFSOQ/RFP and attached for reference.

Exhibit A

Sample OUHSD Consultant Agreement

Sample

Instructions / Face Sheet for INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL/SPECIAL SERVICES (CONSTRUCTION-RELATED)

Contract Number: _____
Funding Source: _____
Budget Number: _____
Site/Department: _____
Program Responsibility: _____

The District employee that is providing the attached Independent Consultant Agreement for Construction-Related Professional Services should first do the following:

1. Determine which of the following statutory provisions the District is relying on in entering into this contract:
 - If Consultant is furnishing architecture, landscape architecture, engineering, environmental services, land surveying, or construction management, then Government Code section 4529.12 requires the District to procure contract through a fair, competitive selection process (e.g., by obtaining proposals, using a request for proposal or request for qualification process).
 - If Consultant is furnishing special services and advice in financial, economic, accounting, engineering, legal or administrative matters, and those persons are specially trained and experienced and competent to perform the special services required, then Government Code section 53060 authorizes the District to procure contract through direct negotiation.
2. Review the insurance requirements for the District and revise the insurance provisions of the agreement accordingly.
3. Review the forms under section 3 and determine which of those documents should be attached to the agreement.

• Regarding Fingerprinting Certification •

CONSULTANT for this project will have contact with students as indicated below.

- CONSULTANT will have **NO** contact with students.
- CONSULTANT will have contact with students only in the immediate presence of a District staff member.
- CONSULTANT will have unsupervised contact with students. A consultant certification is attached.

Project Manager's Signature

Date

4. **Completely fill in all blanks and delete the unused options in the agreement.**
5. **Ensure there is an accurate and complete description of the Consultant's Scope of Services.**
6. **Require the Consultant to complete the following before it begins working under the Agreement:**
 - **All required certificates and documents, including insurance documents.**
 - **All information regarding the Consultant located after the signature block.**
7. **Electronically file PWC-100 form with the Department of Industrial Relations within five (5) days after award of contract, if applicable.**

INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL/SPECIAL SERVICES

Sample

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the _____ day of _____, 20__ by and between the Oxnard Union High 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, Government Code section 53060, authorizes the District to contract with and employ any person(s) for the furnishing of special services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special 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 specially trained and experienced and competent to perform the _____ services required by the District, and those services are needed on a limited basis.

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** Consultant shall provide _____ 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 the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

 X Signed Agreement
 X Workers' Compensation Certification

- Fingerprinting/Criminal Background Investigation Certification
- Insurance Certificates and Endorsements
- W-9 Form
- Other: _____

Sample

4. **Compensation.** District agrees to pay 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 Services 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 Consultant submits an invoice to the District for Services actually completed and after the District's written approval of the Services, or the portion of the Services 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.

4.3. District will withhold 2% of each billing until the Division of the State Architect certification is received for the entire project.

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, except as follows:

6.1. _____.

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 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

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 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, 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 caused 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 causes 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 Consultant's full involvement, the District shall remove all title blocks and other information that might identify Consultant.

11. **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.
12. **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 the 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, the 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 the Consultant's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Consultant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

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 Consultant or no later than three (3) calendar days after the day of mailing, whichever is sooner.

13.2. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

13.2.1. material violation of this Agreement by Consultant; or

13.2.2. any act by Consultant exposing the 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, 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, 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 Consultant. Consultant shall, to the furthest extent permitted by California law, defend the Indemnified Parties at Consultant's own expense, from any and all Claim(s) and allegations relating thereto with counsel approved by District where such approval is not to be unreasonably withheld. Whereas the cost to defend the Indemnified Parties charged to the Architect shall not exceed the proportionate percentage of Architect's fault as determined by a court of competent jurisdiction, any amounts paid in excess of such established fault will be reimbursed by the District. Notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the design professional shall meet and confer with other parties regarding unpaid defense costs.

15. **Insurance.**

15.1. 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
Employers' Liability	\$ 1,000,000

15.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect 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, 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 Consultant's profession, coverage to continue through completion of construction plus two (2) years thereafter.
- 15.2. **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 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, 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 Consultant pursuant to this Agreement shall not be assigned by 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 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 the District, in writing, and, at the sole option of the 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 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. At least one week before commencing work, Consultant shall provide to the District the name and DIR registration number for Consultant and any applicable subcontractor.
- 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 Services 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.** Consultant herein agrees to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246; and all administrative rules and regulations found to be applicable to Consultant and all of its subcontractors. In addition, 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. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises ("DVBE"). In accordance therewith, Consultant must submit, upon

request by the District, appropriate documentation to the District identifying the steps the Consultant has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.

23. **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.
24. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
- 24.1. Requesting that District employee(s) evaluate Consultant and Consultant's employees and subcontractors and each of their performance.
 - 24.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
25. **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.
26. **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.
27. **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 or electronic mail, addressed as follows:

District:

Oxnard Union High School District
309 South "K" Street
Oxnard, CA 93030
Fax: 805-385-2500
Email: _____
ATTN: _____

Consultant:

[NAME]
Street _____
_____, CA 9_____
Fax: _____
Email: _____
ATTN: _____



Any notice personally given or sent by facsimile transmission or electronic mail 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.

- 28. **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.
- 29. **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.
- 30. **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.
- 31. **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.
- 32. **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.
- 33. **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.
- 34. **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.

- 35. **Tolling of District's Claims.** Consultant agrees to toll all statutes of limitations for District's assertion of claims against Consultant that arise out of, pertain to, or relate to contractors' or subcontractors' claims against District involving Consultant's services under this Agreement, until the contractors' or subcontractors' claims are finally resolved.
- 36. **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.
- 37. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
- 38. **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.
- 39. **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.
- 40. **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__

Oxnard Union High School District

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Information regarding Consultant:

License No.: _____

Registration No.: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Type of Business Entity:

Individual

Sole Proprietorship

Partnership

Limited Partnership

Corporation, State: _____

Limited Liability Company

Other: _____

Employer Identification and/
Social Security Number

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 Consultant to furnish the information requested in this section.

EXHIBIT "A"
DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT

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

Sample

WORKERS' COMPENSATION CERTIFICATION

Sample

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 Services of this Agreement.

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 Services under this Agreement.)

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: _____