SAN DIEGO UNIFIED SCHOOL DISTRICT

RFP No. PS22-0218-18
REDISTRICTING SUPPORT SERVICES

ADVERTISEMENT DATES:
AUGUST 5, 2021
AUGUST 12, 2021

2351 Cardinal Lane, Building M, San Diego, CA 92123
GENERAL INSTRUCTIONS SECTION

1. **INTRODUCTION**

The District is issuing this solicitation to receive sealed proposals from qualified business entities to provide:

**REDISTRICTING SUPPORT SERVICES**

The method of procurement will be a competitive solicitation via a Request for Proposal (RFP), which may include the submission of best and final offers (BAFO).

Price will not be the sole determinant for the award of agreement. The competitive Proposals will be evaluated based upon best value, which may include among other criteria: price, shipping terms and pricing, quality of product, performance, references, financial information, and the ability to successfully market to and supply K-14 entities.

The intended term of an agreement is **September 29, 2021 through December 31, 2021**.

The District seeks proposals that clearly present evidence of competency and capability of providing the services detailed herein. Proposers shall, in their submitted proposals, detail their experience, expertise, qualifications, and proposed methodology to provide the services described in this RFP.

This RFP is designed to provide interested Proposers with sufficient basic information to submit proposals meeting minimum requirements. Furthermore, this RFP is not intended to exclude any relevant or essential data. The District will consider various proposals and methods of providing the service(s) outlined in this document.

The RFP shall not obligate the District to purchase or award an agreement for any services specified herein. Furthermore, the District reserves the right to accept or reject any or all proposals received, to waive minor irregularities, to negotiate with any qualified source or to cancel in part or in its entirety this RFP, if it is determined by the District to be in its best interest.

No proposals shall receive consideration by the District unless made in accordance with instructions contained within this RFP.

2. **BACKGROUND**

The District serves more than 106,000 students in pre-school through grade 12 and is the second-largest district in California. The student population is extremely diverse, representing more than 15 ethnic groups and more than 60 languages and dialects.

Since its founding on July 1, 1854, the District has grown from a small, rented school building with one teacher to its current size—more than 226 educational facilities with 13,559 employees. Nearly 6,000 teachers are in classrooms at the District's various educational facilities, which include 117 traditional elementary schools, 9 K-8 schools, 25 traditional middle schools, 24 high schools, 49 charter schools, and 14 atypical/alternative schools.

The District is proud to call itself one of the top large urban school districts in the United States. Measures include its top scores on state and national tests, its leadership in areas such as technology, curriculum, neighborhood and specialty schools, career-technical education, and food services. Its graduates include Hall of Fame sports stars, along with some of the nation's top scientists, writers, and leaders.
3. **SUBMISSION OF PROPOSALS**

In order to be considered complete and responsive to this RFP, electronic Proposals submitted through Planet Bids must include all of the following uploaded as a stand-alone PDF document:

- Pricing Proposal – stand-alone document
- Technical Proposal
  - *Do not include Pricing.* Include all of Proposer’s narrative pages to fully detail proposal offer.
- Past Performance/References
  - Include completed Reference Form and one completed Questionnaire from each Reference source.
  - **Attention – Failure to adequately complete the Past Performance/Reference Form may cause your submittal to be deemed non-responsive or incomplete and removed from further consideration.**
- Non-Collusion Declaration
- Drug-Free Workplace Certification
- W-9 & Form 590 (if applicable)
- Insurance Documents noted in “Sample Agreement”
- List of Employee Form (if applicable)
- Background Checks Certification (if applicable)
- Copies of Licenses and Certifications (if applicable)

Completed forms should be without interlineations and/or alterations.

Proposals must be typewritten and prepared in a clean and professional manner. Mistakes may be crossed out and corrections inserted adjacent thereto and must be initialed in ink by person signing proposal.

**THIS RFP WILL ONLY BE RECEIVING ELECTRONIC SUBMITTALS THROUGH PLANET BIDS eBid. THEREFORE, PROPOSERS MUST SUBMIT THEIR ELECTRONIC PROPOSAL THROUGH PLANET BIDS. NO OTHER FORM WILL BE ACCEPTED.**

4. **INTERPRETATION OR QUESTIONS ON RFP DOCUMENTS**

Any questions relative to this solicitation shall be directed through Planet Bids portal by the stated date and time. No Proposals will be emailed. The District Contract Specialist will post answers to all questions through Planet Bids. Any Addendums will be posted through Planet Bids.

5. **TECHNICAL PROPOSAL**

Proposals shall address the following items succinctly and specifically within the appropriate sections noted below. The proposal should present all information in a concise manner and in terminology understandable for evaluation by the District’s Evaluation Committee. It is more desirable to give additional information than less when the answer could be misinterpreted. There should be no attachments, enclosures, or exhibits other than those considered by Proposer to be essential to a complete understanding of the proposal submitted. A Table of Contents is required, and each section of the proposal must be tabbed with clear listings of the headings with page numbers to allow easy location of key information. Failure to include all specified sections in response to this RFP may be deemed incomplete.

(1) **Title Page:** On one-page, state the full legal name of the entity or principal individual, business address, telephone, fax, and e-mail address. If applicable, include the branch office or other subordinate element that will perform, or assist in performing, the work hereunder. If a joint venture, provide the contact information for each participating entity. Whether a single entity or joint venture, a single entity must be identified as primary for all communications with the District. Contact information for the project manager from that primary entity must be provided. Note: payment for all services rendered will be made to the primary entity.
(2) **Background/History**: Indicate whether the entity operates as an individual, partnership, or corporation; if as a corporation, include state in which it is incorporated. State whether the entity is licensed to operate in the State of California. State number of years the entity has been in business, products, and services offered, total number of employees, organizational structure, and current financial stability. This should be only one-page in length.

Proposer shall submit an audited financial statement from the entity and any parent company for the last two (2) years of operation. These financial documents are not public records and shall not be open for public inspection.

If the proposal is being submitted by a Joint Venture of two or more entities, each must provide background/historical information. In addition, the statement must describe the proposed working relationship of the parties and the percentages of the total work each entity is expected to complete. The Joint Venture must also provide, at the time of its response to this RFP, a true, correct copy of its Joint Venture agreement in which the individual entities agrees to be both individually as well as jointly and severally liable to the District for the obligations of the Joint Venture.

(3) **Experience & Expertise**: Provide a description of Proposer’s experience for the past five (5) years, with particular emphasis on services provided to California K-14 school districts, or other large California public agencies in providing the services described in this RFP.

Relevant experience shall be listed in reverse chronological order (most recent first). For each listed project, provide the client name, point of contact, project location, size of each school district/public agency, approximate cost of project, and a brief project description.

(4) **Staff Qualifications**: Provide the names and titles of key individuals in the entity who will be assigned and dedicated to this project to ensure the successful execution and completion of the work. Indicate the number of years of experience relevant to this RFP each has with the entity. Specify the specific roles and responsibilities each person will have in this project. Indicate the level of on-site assistance the District will receive from these individuals. Include the resumes of key individuals that detail their relevant experience in serving educational institutions and/or school districts, addresses, telephone numbers, fax numbers, and e-mail addresses. In particular, please identify who will be assigned as the Project Manager(s) to work with the District on a day-to-day basis on this project, and who will be authorized to make recommendations and decisions regarding the work.

Detail and provide copies of any pertinent certification, license, etc. that the entity and staff currently have relating to the services requested herein.

(5) **Proposed Methodology and Work Plan**: Clearly state project approach to successfully execute the **Scope of Work**, as referenced in Exhibit A. Proposals shall include an estimated project timeline including commencement of fieldwork and schedule of weekly/monthly meetings with District’s representative through delivery of final reports. Proposals shall also include a description of Proposer’s quality control process.

Proposer shall include a description of any involvement and responsibilities which would be required of the District.

(6) **Customer Service/Support/Training/Maintenance/Warranty**: Describe the support services and training Proposer is offering to the District for the implementation and administration of this project, including but not limited to, technical assistance, user manuals, instructional materials, training classes, or any other assistance that may support the District during the life of any agreement resulting from this Proposal.

(7) **Termination for Cause or Convenience**: If entity has had an agreement terminated for default (cause) or convenience, or has a pending termination, or a settlement to avoid litigation or termination for cause or convenience during the past five (5) years, please explain all such incidents. Termination for default (also known as termination for cause) is defined as notice to stop work due to the Proposer’s non-performance or poor performance, and the issue was either (a) not litigated or arbitrated, but settled through mediation or other voluntary dispute resolution with a third party or settled between the parties themselves; or (b) litigated or arbitrated and such litigation or arbitration resulted in a judgment by a court (judge or jury) or arbitrator. Termination for convenience refers to all other terminations.
(8) **Claim/Litigation/Arbitration History:** List all claims, lawsuits or arbitrations (whether settled or adjudicated) filed within the last five (5) years by the following relating to your services for demands made, whether paid by Proposer or by a third-party insurer, amount paid, and why:

A. On behalf of your entity, related to your services, including but not limited to, against a client for whom you performed the professional services.
B. Against your entity, related to your services, including but not limited to, a client for whom you performed professional services.
C. On behalf of or against your entity, or on behalf or against any project staff, involving a school district or any district employee acting in the course of work as a district employee.

A claim is defined as a demand for payment that is disputed. A lawsuit is an actual complaint filed in court. Arbitration is an alternative dispute resolution in which a neutral third party renders a decision after a hearing in which both sides have an opportunity to be heard.

(9) **EXCEPTIONS BY PROPOSERS TO RFP TERMS AND CONDITIONS**

ANY EXCEPTIONS, QUALIFICATIONS, ETC. THAT PROPOSER TAKES TO ANY OF THE TERMS, CONDITIONS, REQUIREMENTS, SPECIFICATIONS, ETC. SET FORTH IN THIS RFP MUST BE DETAILED BY PROPOSER IN A SEPARATE DOCUMENT TITLED “EXCEPTIONS TO RFP TERMS, CONDITIONS, REQUIREMENTS AND SPECIFICATIONS” AND INCLUDED WITH THE ORIGINAL PROPOSAL SUBMITTED. NO ADDITIONAL EXCEPTIONS WILL BE CONSIDERED.

Said document must be submitted with the Technical Proposal. Said exceptions, qualifications, etc. must identify the RFP page number, section and paragraph title and clearly detail the exception, qualification, etc. being taken by the Proposer. Points may be deducted in the District’s scoring and evaluation of Proposals.

(10) **Additional Information and Comments:** Include any other information that is pertinent but not specifically asked for herein.

(11) **Signature Page:** Indicate that the Proposal shall be valid for a period of at least six (6) months; apply the signature of the person responsible for the proposal and a statement that said person has the authority to bind Proposer.

6. **PRICING PROPOSAL**

A. The District is seeking a Proposer that brings technical expertise, process discipline, best industry practices, and industry talent to implement successful services while providing competitive fixed pricing on proposed services. All prices offered will be firm and fixed for the entire term of the agreement and will be inclusive of all costs, taxes, fees, and services required to perform and complete the specified services herein.

B. Proposer shall state all costs associated with its proposal that it intends to charge—provide a full breakdown by year of any cost that may potentially be associated with the District’s purchase of its services. Failure to break out costs as indicated, may result in the rejection of the proposal.

1) Costs shall include all related service(s), labor, or material, including any travel and expenses. Proposer should build all costs into the proposed fee structure as travel and expenses will not be reimbursed separately.

2) Any discounts which Proposer desires to provide the District must be stated clearly in its proposal so that the District can properly calculate the proposal’s net cost.

3) Describe the procedure(s) for calculation of the fees for District-wide services to include any deliverables noted in the Scope of Work.

4) Provide a proposed milestone payment plan and methodology based upon the District’s Scope of Work.
7. **PAST PERFORMANCE / REFERENCES**

A. On the included form titled “Reference Form,” provide a minimum of three (3) clients to whom Proposer provided similar support services listed herein within the past five (5) years.

1) **Proposals must include references and the contact information so that the District may speak with each reference about:**
   - Quality of the entity’s services and deliverables
   - Service responsiveness
   - Overall satisfaction with the service program and support team

2) Also, provide a list, by name, of all current clients of the following types:
   - K-14
   - College/University/Community College
   - City
   - County
   - State
   - Aviation/Port Authority
   - Special tax district

8. **METHOD OF PROPOSAL AND SCREENING AND SCORING OF PROPOSALS**

The District Evaluation Committee will screen and score all proposals for compliance with the RFP, and may select finalists for further proposal evaluation. Such selection of finalists shall be based upon, but not limited to, the following evaluation criteria:

A. **Experience (References and Prior Projects) (200 pts of 400 pts)**
   1) The District will evaluate the experience, knowledge, expertise, and qualifications of the staff and past performance and history in providing similar requested services on projects with school districts or public agencies of similar size and scope. The District will also evaluate the legal history and financial stability of each Proposer.
   2) The District will evaluate the quality of the entity’s services and deliverables, responsiveness, and overall satisfaction with the services based on discussion with the listed referrals.

B. **Technical Information (100 pts of 400 pts)**
   1) The District will evaluate Proposer’s ability to meet the functional requirements and provide the desired features to best meet the needs of the District.
   2) The District will evaluate the timeline for the proposed services, the methodology and work plan proposed to implement, and complete the **Scope of Work** detailed herein, as well as any value-added items.
   3) The District will evaluate the number and quality of the exceptions and qualifications to the RFP.

C. **Pricing Proposal (70 pts of 400 pts)**
   1) The District will evaluate the proposed prices for the services requested herein as well as any additional offered discounts.
D. District Requirements (30 pts of 400 pts)
   1) The District will evaluate the quality of Proposer’s services and deliverables, responsiveness and overall satisfaction with the services to fulfill District requirements.

9. PROPOSAL EVALUATION AND NEGOTIATION CONFERENCE

Upon completion of the District Evaluation Committee’s review, assessment, and scoring of proposals, the District, at its sole discretion, reserves the right to create a short-list of the top-ranked/scored entities and to subsequently conduct oral interviews and negotiations on their submitted proposals. Each selected finalist shall be given an opportunity to make a presentation, summary and/or demonstration on its submitted proposal. Oral interviews shall include any and all areas of concern relevant to an agreement as determined by the District to be in its best interests. Negotiations shall include, but not be limited to, price negotiations, service negotiations, and any other areas of negotiations relevant to an agreement.

10. METHOD OF AWARD

From the selected finalists, an agreement may be offered to Proposer(s) whose proposal is/are evaluated and determined by the District’s Evaluation Committee to be in the District’s best interests. Furthermore, the District reserves the right to make an award on the basis of the initial proposals received without discussions or further negotiations with Proposers. Proposers should submit a complete, comprehensive, and most favorably priced written proposal.

In addition to the rights and reservations listed above in the Introduction, award preference may be given, at the District’s sole discretion, to the Proposer(s) whose offer is determined by the District’s Evaluation Committee to be the most cost-effective, operationally comprehensive and beneficial and/or which is determined by the District to be in its best interest. The evaluation, scoring, and award decision of the District shall be final.

The District reserves the right to make an award any time up to six (6) months from the date of proposal submission.

11. AMENDMENTS AND ADDENDUMS

The terms and conditions contained in the RFP, Proposal Form, General Instructions, Scope of Work, General Conditions and Sample Agreement herein may be amended or modified only with the prior written approval of the District. Any addenda or bulletins issued prior to the opening of the RFP shall form a part of the specifications issued to Proposers for the preparation of their proposals and shall constitute a part of the agreement documents.

Any modification, qualification, exception, or change made to the District’s terms and conditions detailed herein may be grounds for rejection of the proposal.

12. EVIDENCE OF RESPONSIBILITY

Proposer shall submit promptly to the District satisfactory evidence showing the Proposer’s financial resources, the Proposer’s experience in the type of work being required by the District, Proposer’s availability for the performance of the work and any other required evidence of Proposer’s qualifications to perform. The District may consider such evidence before making its decision. Failure to submit evidence of Proposer’s responsibility to perform may result in rejection of the proposal.

13. PREVIOUS PERFORMANCE

The District reserves the right to reject a proposal from a Proposer that cannot demonstrate the ability to provide the services required. Proposers must provide verification that they have been in the business as required for compliance with the requirements of this proposal, for at least two (2) years and that, during this time, have provided similar services required herein to K-14 school districts or public agencies of similar size and operation in its business processes.
14. **PROPOSERS INTERESTED IN MORE THAN ONE PROPOSAL**

No person, firm, or corporation shall be allowed to make, or file, or be interested in more than one proposal for the same work unless special proposal conditions indicate otherwise. A person, firm, or corporation who has submitted a sub-proposal to a proposer, or who has quoted prices of materials to a proposer is not thereby disqualified from itself submitting a proposal or quoting prices to other proposers.

15. **NON-FUNDING**

Notwithstanding any other provision to the contrary, if for any fiscal year of this Agreement, the Board of Education for any reason fails to appropriate or allocate funds for future payments under this Agreement, the District will not be obligated to pay the balance of funds remaining unpaid beyond the fiscal period for which funds have been appropriated and allocated.

16. **COST OF PROPOSAL PREPARATION**

Cost of preparation of the response to the RFP is solely the responsibility of Proposer. The District accepts or implies no liability in the cost of preparation.

17. **NEWS RELEASES**

News releases pertaining to this Proposal or the services, study, data, or project to which it relates will not be made without the prior written approval of the District. No results of the project are to be released without prior written approval of the District.

18. **INDEPENDENT PRICE DETERMINATION**

By submission of a proposal, Proposer certifies, and in the case of a joint proposal, each entity thereto certifies as to its own organization, that in connection with this proposal:

A. The prices in the proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such prices with any other Proposer or with any competitor; and

B. Unless otherwise required by law, the prices which have been quoted in the proposal have not been knowingly disclosed by the Proposer prior to award directly or indirectly to any other Proposer or to any competitor; and that no attempt has been made or will be made by Proposer to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.

----------------------------------------------------------------------------------END OF GENERAL INSTRUCTIONS SECTION----------------------------------------------------------------------------------
| Company Name: |  
| Contact Person: |  
| Address: |  
| Phone: |  
| Fax #: |  
| E-mail address: |  
| Description of service provided: |  
| Month/year dates of service: |  

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| Description of service provided: |  
| Month/year dates of service: |
REFERENCE QUESTIONNAIRE

Proposer: ____________________________________________________________

Reference Organization: _____________________________________________
Contact: ____________________________________________________________
Telephone: ____________________________________________________________
Email: _____________________________________________________________

1. Please describe the services provided: Scope of Work, complexity, diversity of tasks performed:

Comments: ______________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________

2. Skills/Expertise required:

Comments: ______________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________

3. How long has Proposer been performing services for you?
   ___ (a) Less than 1 year
   ___ (b) Less than 5 years
   ___ (c) More than 5 years

Comments: ______________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________

4. Are you satisfied with Proposer’s ability to provide the required service on time, including any reports, external communications, facilitation, etc.? (check one) Y_____ N_____ 

Comments: ______________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________

5. Is Proposer customer service orientated (courteous interactions, satisfaction of end-users with vendor’s service, initiative and proactive suggestions, approaches, and improvements)?
   (check one) Y______ N_____

Comments: ______________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________
6. Have you ever had problems with any of Proposer’s staff or Proposer and if so, were the problems resolved expeditiously? (check one) Y_____ N_____

Comments:  __________________________________________________________
          __________________________________________________________
          __________________________________________________________

7. Would you recommend Proposer and why? (check one) Y_____ N_____

Comments:  __________________________________________________________
          __________________________________________________________
          __________________________________________________________

8. Overall Satisfaction of past performance/service:

   Past Performance Standards

   Outstanding – Proposer’s performance consistently exceeded expectations and was technically superior, providing significant features or benefits.

   Satisfactory - Proposer’s qualifications are at a level that would normally be expected in the commercial marketplace. The Proposer sufficiently addresses all or most of the elements. Proposer is capable of adequately performing the requirement.

   Unacceptable - Proposer has historically failed to perform in a satisfactory manner in the fulfillment of like or similar requirements. This rating indicates an unacceptable level of performance risk.

   (check one):

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<th>Outstanding</th>
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NON-COLLUSION DECLARATION

The undersigned declares:

I am the __________________________ of __________________________, the entity making the foregoing Proposal.

The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Proposal is genuine and not collusive or sham. Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal. Proposer has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham Proposal, or to refrain from Proposing. Proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Proposal price of Proposer or any other Proposer, or to fix any overhead, profit, or cost element of the Proposal price, or of that of any other Proposer. All statements contained in the Proposal are true. Proposer has not, directly or indirectly, submitted its Proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, Proposal depository, or to any member or agent thereof, to effectuate a collusive or sham Proposal, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on this _____ day of __________, 20__ at __________________________. (City and State)

By: ____________________________  ____________________________
   (Signature)                    (Date)
   ____________________________  ____________________________
   (Typed or Printed Name)        (Title)
   ____________________________  ____________________________
   (Address)                     (Phone/Fax with area code)
   ____________________________  ____________________________
   (City/State/Zip)               (Email Address)
I, ____________________________, am the _________________________ of ___________________________________.

(Print Name) (Title) (Business Name)

I declare state and certify to all of the following:


2. I am authorized to certify, and do certify, on behalf of Proposer that a drug-free workplace will be provided by Proposer by doing all of the following:

   A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in Proposer's workplace and specifying actions, which will be taken against employees for violation of the prohibition.

   B. Establishing a drug-free awareness program to inform employees about all of the following:

      (i) The dangers of drug abuse in the workplace;

      (ii) Provider's policy of maintaining a drug-free workplace;

      (iii) The availability of drug counseling, rehabilitation and employee-assistance programs; and

      (iv) The penalties that may be imposed upon employees for drug abuse violations;

   C. Requiring that each employee engaged in the performance of the Agreement be given a copy of the statement required by subdivision (A), above, and that as a condition of employment by Proposer in connection with the Work of the Agreement, the employee agrees to RFP by the terms of the statement.

3. Proposer agrees to fulfill and discharge all of Provider's obligations under the terms and requirements of California Government Code §8355 by, inter alia, publishing a statement notifying employees concerning: (a) the prohibition of any controlled substance in the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the Work of the Agreement be given a copy of the statement required by California Government Code §8355(a) and requiring that the employee agree to RFP by the terms of that statement.

4. Proposer and I understand that if the District determines that Proposer has either: (a) made a false certification herein, or (b) violated this certification by failing to carry out and to implement the requirements of California Government Code §8355, the Agreement awarded herein is subject to termination, suspension of payments, or both. Proposer and I further understand that, should Proposer violate the terms of the Drug-Free Workplace Act of 1990, Proposer may be subject to debarment in accordance with the provisions of California Government Code §§8350, et seq.

5. Proposer and I acknowledge that Proposer and I are aware of the provisions of California Government Code §§8350, et seq. and hereby certify that Proposer and I will adhere to, fulfill, satisfy and discharge all provisions of and obligations under the Drug-Free Workplace Act of 1990.

I declare under penalty of perjury under the laws of the State of California that all of the foregoing is true and correct.

Executed at San Diego, California

By: ______________________________________ (Signature) __________________________ (Date)

________________________________________ (Typed or Printed Name) (Title)
GENERAL CONDITIONS SECTION

1. Performance Notification
In the event Proposer is unable to perform any or all obligations under any resultant Agreement or the Proposer is able to foresee a potential issue (i.e., system failure) that will impact the quality or quantity of the Scope of Work, services or level of performance under the Agreement, Proposer shall notify the District’s Contract Specialist immediately in writing of such event.

2. Time is of the Essence
Time is of the essence. If any anticipated or actual delays arise, Proposer shall immediately so notify District. Regardless of notice, if deliveries are not made at the time agreed upon, District may, at its sole discretion, terminate this Agreement and proceed pursuant to the provisions herein for Default.

3. Excuse for Non-Performance - Force Majeure Clause
Proposer shall be excused from performance hereunder during the time and to the extent that it is prevented, hindered, or delayed from obtaining, delivering or performing in the customary manner by an unforeseen event or circumstance that occurs after the parties entered into an agreement that is beyond their control as a result of war, terrorism, third party strike, riot, epidemic/pandemic, governmental directives/orders such as mandatory quarantine, travel restrictions, or decree to shutdown, partial or total interruption of, loss or shortage of transportation facilities, lockout, commandeering of raw materials, products, or facilities by the government, or violent forces of nature such as hurricane, flood, earthquake, and other acts of God when satisfactory evidence thereof has been presented to the District that the non-performance, hindrance of performance, or delayed performance is not due to the fault or negligence of the entity not performing with no commercially reasonable alternative.

Any non-performance, hindrance of performance, or delayed performance from the affected entity shall not be (i) a default hereunder; (ii) subject to liquidated damages or penalties; or (iii) a ground for termination of this Agreement.

4. Assignment
Proposer shall not assign, convey, or transfer any rights, obligations, or interests hereunder without the prior written consent of the District.

5. Prevailing Law
In the event of any conflict or ambiguity between a) the Instructions, General Conditions, or any other document forming a part of this RFP, and b) state or federal law or regulations, the latter shall prevail. Additionally, all equipment to be supplied or services to be performed under the proposal shall conform to any applicable requirements of local, state, and federal law.

6. Governing Law and Venue
In the event of litigation, the documents, specifications, and related matters shall be governed by and construed in accordance with the laws of the State of California. Venue shall be the appropriate state or federal court located in San Diego County.

7. Non-Funding
Notwithstanding any other provision to the contrary, if for any fiscal year of this Agreement the Board of Education for any reason fails to appropriate or allocate funds for future payments under this Agreement, the District will not be obligated to pay the balance of funds remaining unpaid beyond the fiscal period for which funds have been appropriated and allocated.

8. Anti-Discrimination
It is the policy of the District that, in connection with all the work performed, there will be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, sexual orientation, or marital status. Proposer agrees to comply with applicable federal and California laws, including, but not limited to, California Fair Employment & Housing Act, found at Government Code section 12940, et seq. In addition, the Proposer agrees to require like compliance by any subcontractors employed on the work.

9. Gratuities
District policy precludes employees from accepting any gratuities from Proposers. Rebates or any other form of commission or discount must be issued to the District.
10. **Proprietary Information**
All proposals will become the property of the District and subject to the California Public Records Act, Government Code sections 6250, et seq. (However, financial statements that are submitted as part of a proposal are not public records and shall not be open for public inspection.) Those elements in a proposal that are trade secrets as that term is defined in Civil Code section 3426.1(d) or otherwise exempt by law from disclosure and which are prominently marked as “TRADE SECRET,” “CONFIDENTIAL,” or “PROPRIETARY” may not be subject to disclosure. The District shall not be liable or responsible for the disclosure of any such records including, without limitation, those so marked if disclosure is deemed to be required by law or by an order of the Court. A Proposer that indiscriminately identifies all or most of its proposal as exempt from disclosure without justification may be deemed non-responsive. If the District is required to defend a claim or an action on a Public Records Act request for any of the contents of a proposal marked “Confidential,” “Proprietary,” or “Trade Secret,” Proposer agrees, by submission of its Proposal, to defend and indemnify the District from all costs and expenses, including attorneys’ fees, for liability arising under the Public Records Act.

11. **District’s Department Contract Representative**
The District’s Department Contract Representative (DCR) will be:

Drew Rowlands  
Chief Business Officer  
Office of Chief Business Officer  
Office: (858) 627-7218 | drowlands@sandi.net

**NOTE:** The DCR will not answer any questions related to this RFP

The District’s Strategic Sourcing and Contracts Officer may at any time during the term of the Agreement appoint a designee or representative for the purposes of project management.

12. **Default**
If Proposer refuses or fails to perform all or any part of its obligations hereunder, or fails to perform all or any part of its obligations in a timely manner, or if Proposer should be adjudged as bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or if it or any of its subcontractors should violate any of the provisions of this Agreement, the District may serve written notice of its intention to terminate this Agreement, such notice to contain the reasons for such intention to terminate this Agreement, and unless within ten (10) days after the serving of such notice, such violation(s) shall cease and arrangements satisfactory to the District for the correction thereof shall have been made, this Agreement shall, upon the expiration of said ten (10) days, cease and terminate.

13. **Conduct of Proposer**
Proposer agrees to inform the District of all Proposer’s interests, if any, which are or which Proposer believes to be incompatible with the interests of the District.

Proposer shall not, under circumstances which might reasonably be interpreted as an attempt to influence the recipient in the conduct of his duties, accept any gratuity or special favor from individuals or organizations with whom the Proposer is doing business or proposing to do business, in accomplishing the work under the Agreement.

Proposer shall not use for personal gain or make improper use of privileged information, which is acquired in connection with the Agreement. In this connection, the term “privileged information” includes, but is not limited to, unpublished information relating to technological and scientific development; medical; personnel, or security records of individuals; anticipated materials requirements or pricing actions; and knowledge of selections of vendors or subcontractors in advance of official announcement.

Proposer or employees thereof shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to District employees.
14. Audit and Inspection of Records

GENERAL
The District shall have the audit and inspection rights described in this section.

COST OR PRICING DATA
If Proposer submitted cost or pricing data in connection with the pricing of this Agreement or any change or modification thereto, unless such pricing was based on adequate price competition or prices set by law or regulation, the District’s representative(s) shall have the right to examine all books, records, documents and other data of Proposer related to the negotiation pricing or performance of such Agreement, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted.

AVAILABILITY
The materials described above shall be made available at the office of Proposer, at all reasonable times, for inspection, audit or reproduction, until the expiration of three (3) years from the date of final payment under this Agreement, or by (a) and (b) below:

A. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any resulting final settlement.

B. Records which relate to appeals under this Agreement, or litigation or the settlement of claims arising out of the performance of this Agreement, shall be made available until such appeals, litigation, or claims have been disposed of, or three (3) years after Agreement completion, whichever is longer.

15. Right to Acquire Product and Services
Nothing in this Agreement shall prohibit the District from contracting with and acquiring the same type of services and/or products from other sources when deemed to be in the District’s best interest.

16. Proposer’s Documents Responsibility
Before submitting a proposal to the District, and continuously after the execution of this Agreement, Proposer shall carefully study and compare all documents and shall at once report to the District representative any error, inconsistency, or omission discovered.

17. Indemnification
To the fullest extent permitted by California law, Proposer shall defend, indemnify, and hold free and harmless the District, its Board of Education, 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 or nature whatsoever, in law or equity, including personal injury and/or death (“Claim”), arising directly or indirectly from the acts, errors or omissions of Proposer, its officers, directors, employees, consultants, or agents, in connection with the performance of Work under this Agreement, including without limitation the payment of all consequential damages.

Proposer shall defend, indemnify, protect and hold the District and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property which arise from or are connected with or are caused or claimed to be caused by Proposer’s failure to comply with all of the requirements contained in Education Code section 45125.1, including, but not limited to, the requirement prohibiting Proposer from using employees who may have contact with pupils who have been convicted or have charges pending for a felony as defined in Education Code section 45125.1.

Proposer shall, at its own cost, expense and risk, shall defend any and all actions, suits, or other legal proceedings that may be brought or instituted against the District on any such claim or demand, and pay or satisfy the judgment that may be rendered against the District in any such action, suit or legal proceedings or result thereof.
18. **Clean Air Act and Federal Water Pollution Control Act**

Proposers that apply or bid for an award exceeding $150,000 must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).


Proposers that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

20. **Employee Fingerprint Verification; Barriers; Employee Surveillance**

At all times when a Site is used or occupied for academic purposes or for other school-related functions, no employee or independent contractor to Proposer or any Subcontractor shall be permitted access to the Site or to perform any Work at the Site unless: (a) such person has submitted her/his fingerprints to the California Department of Justice (“DOJ”) pursuant to Education Code §45125.1; (b) the DOJ has ascertained, based upon the submitted fingerprints, that the individual has not been convicted of a felony defined in Education Code §45122.1 and has no criminal felony proceedings (as defined in Education Code §45122.1) pending against her/him; (c) the Proposer or Subcontractor engaging the individual for the Work has received written or electronic verification from the DOJ of the absence of felony convictions and pending felony criminal proceedings; and (d) Proposer or Subcontractor engaging such individual as an employee or independent contractor has submitted a Fingerprint Certification to the District specifically identifying such individual as having been verified by the DOJ as not having been convicted of a felony and not having pending criminal felony proceeding pending against her/him. The provisions of Education Code §45125.2(a) notwithstanding, erection and maintenance of physical barriers and/or continuous supervision and monitoring are insufficient measures to comply with the requirements of this paragraph when a Site is being used or occupied for academic purposes or other school-related functions. At all other times during the Work, as appropriate, or as directed by the District, to limit contact between workers performing the Work and students and for the safety of students, the Proposer shall: (i) erect a physical barrier around the Work to limit contact between students and the individuals performing Work; or (ii) designate an employee of Proposer and require each Subcontractor to designate an employee who shall be responsible for the continuous monitoring and supervision of the other employees of Proposer and Subcontractors, provided that the employees designated for such monitoring and supervision has submitted her/his fingerprints to the Department of Justice under Education Code §45125.1 for verification that she/he has not been convicted of a felony and does not have any criminal proceeding pending against her/him and Proposer/Subcontractor employee has submitted a Fingerprint Certification attesting to such Department of Justice fingerprint verification and the absence of criminal convictions or pending criminal proceedings. The responsibility for complying with the requirements of Education Code §45125.2 rests solely with Proposer; the District will not designate any District personnel for surveillance of the Proposer’s employees under Education Code §45125.2(a)(3).

21. **Prevailing Wage Requirement (if applicable)**

Prevailing wage and labor compliance requirements currently apply to work performed on or around future or current District public works sites and generally do not apply to professionals working away from the public works site. Work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction, including but not limited to, inspection, land surveying work, regardless of whether any further construction work is conducted, and work performed during the post construction phases of construction, and soils and materials testing are generally considered public works subject to prevailing wage requirements. Applicability of this section is controlled by law. (See, e.g., California Labor Code section 1720, et seq.) Contractor shall comply with this section to the extent it applies to the work it performs either directly or through its subcontractors. As of January 1, 2012, the District no longer administers the in-house Labor Compliance Program for all new construction projects. However, prevailing wage requirements still apply.

A. Pursuant to the provisions of Articles 1 and 2 of Chapter 1, Part 7, Division II, of the Labor Code of the State of California (Labor Code section 1720 et seq. and implementing regulations of the Department of Industrial Relations (DIR)), Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with section...
16000, for any “public works” (as that term is defined in the statues), there shall be paid to each work of Contractor, of any tier, engaged in the work, not less than the general prevailing wage rate, and not less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the work contemplated under this Agreement regardless of any contractual relationship which may be alleged to exist between the contractor, of any tier, and such worker. For the purpose of compliance with prevailing wage law, Contractor shall comply with provisions applicable to an awarding body. Compliance with state prevailing wage law includes without limitation: payment of at least prevailing wage as applicable; overtime and working hour requirements; apprenticeship obligations; payroll recordkeeping requirements; and other obligations as required by law.

B. Copies of the prevailing rate of per diem wages applicable to this Agreement are on file at the District's office and shall be made available to any interested party or may be found on the internet: http://www.dir.ca.gov/DLSR/PWD. Contractor shall post at appropriate conspicuous weatherproof points on the site(s) of the Agreement a schedule showing the Prevailing Wage Determinations published by the Director of the California Department of Industrial Relations, which are applicable to the Agreement.

C. Contractor is responsible for ascertaining and complying with all current general prevailing wage rates for crafts and any rate changes that occur during the life of the contract; and shall ensure that the above requirements are included in all its contracts for activities for the Agreement.

D. Contractor shall certify to the District on each Payment Request Form, that prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and that the Contractor complied with prevailing wage laws. Prior to release of any retained funds under this Agreement, the Contractor shall submit to the District a certificate signed by Contractor performing public works activities stating that prevailing wages were paid as required by law.

E. Failure to comply with prevailing wage laws and/or failure to employ apprentices as required by law shall subject the Contractor to penalties, including forfeitures and debarment under Labor Code sections 1775; 1776, 1777.1; 1777.7 and 1813.

F. Nothing contained herein shall be deemed to supersede any applicable laws, orders or regulations issued by competent authority governing wages, hours of Work of the employment of labor, nor to condone any violation of such laws, orders, or regulations.

G. Upon the request of the Division of Labor Standards Enforcement, the District will withhold contract payments in amounts equal to identified worker under-payments and/or penalties.

Effective July 1, 2014, contractors and subcontractors performing public works subject to prevailing wage are required to pay a registration fee to DIR. On or after April 1, 2015, contractors and subcontractors must be registered with DIR for any new projects awarded on or after this date. DIR requires registration of contractors and subcontractors for all projects above $15,000. Public works projects awarded pursuant to this Agreement are subject to compliance monitoring and enforcement by DIR, and the District will withhold contract payments in amounts equal to identified work under-payments and/or penalties upon the request of DIR. For additional information, see California Labor Code sections 1725.5, 1771.1, et seq.; https://efiling.dir.ca.gov/PWCR/Search; and http://www.dir.ca.gov/Public-Works/PublicWorks.html

H. Contractor shall submit an electronic version of the “Section 1773.3 subcontractors list” form to the District under Labor Code Section 1773.3 within 48 hours of award of Agreement. A copy of the form is included as Attachment 3 and is mandatory. The District will not accept any other form or format from Contractor.
1. The District will use Contractor’s completed electronic form to submit the required information (DIR number, CSLB number, email, and work classification of all subcontractors on the Project) under Labor Code section 1773.3 on the DIR website. Upon contract award, the District will create and upload the PWC-100 on the DIR website and provide the contract registration number to Contractor for electronic certified payroll report (eCPR) submittals with DIR for the project.

2. This list shall contain all subcontractors of any tier that will be performing any labor on the project. All subcontractors must be registered with DIR and hold a current CSLB license. Both the registration and license must be active and current for the time period that the work will be performed on site.

3. If additional subcontractors are to be used, they shall be added to the “Section 1773.3 subcontractors list” within 48 hours prior to their commencement of any work on site, excluding weekends and District holidays. The District will update the PWC-100 on the DIR website and notify Contractor if a subcontractor does not have a current DIR registration number or active CSLB license number. No subcontractor will be allowed to work on site until its status has been corrected by Contractor on the Section 1773.3 subcontractors list form, which shall be electronically submitted to the District, who will upload the subcontractor, along with the required information (DIR number, CSLB number, email, and work classification) on the PWC-100 on the DIR website.

4. At project completion, the District will notify Contractor by email to review, update and certify that all subcontractors that performed work during the contract, have been correctly and properly listed on the “Section 1773.3 subcontractors list.” Once the District receives the certification from Contractor, and the District has added any additional subcontractors to the PWC-100 on the DIR website, the District may issue final payment, provided that other required contract closeout items have been submitted. However, the final payment from District to Contractor shall only be made 30 days after the date the final subcontractors have been added to the PWC-100, or the certification by Contractor, whichever occurs later. Thus, the District shall continue to withhold final payment until Contractor satisfies the foregoing requirements under Labor Code section 1773.3.
EXHIBIT A
SCOPE OF WORK

A. Introduction
Proposers shall demonstrate their expertise in the following areas by providing in their technical proposals previous experiences related to the following topics:

- Local jurisdiction electoral redistricting, primarily involving counties.
- Mapping and balancing electoral Districts.
- Explaining the aforementioned topics to others who may be unfamiliar in the subject matter.
- Presenting information in a public setting such as public meetings.
- Analyzing statistical, demographic, and census data, to support public agency staff.
- Assist in outlining and/or drawing district and precinct boundaries.

B. Scope of Work
Consultant/Professional shall present a thorough understanding of work, approach, method, and procedures to perform the following:

- Upon receipt of the 2020 United States Census data, provide data summary files to the District and update any digital interface previously used for demonstration and informational purposes.
- Analyze whether the 2020 Census data requires modification of District sub-district boundaries.
- Develop, in conjunction with District staff a calendar for redistricting committee meetings.
- Assist the District to engage the public during the course of the redistricting process.
- Develop draft maps reflecting balanced populations as required by law, based on census data, District procured redistricting software as well as County and State regulations which comply with the Voting Rights Act, California Voting Rights Act and other applicable election laws.
- Evaluate any draft maps prepared by others to determine whether they are population balanced and satisfy the requirements of the Voting Rights Acts and other applicable elections laws.
- Present information in a public forum in an objective, non-partisan informational manner.
- Conduct and/or actively participate in all meetings related to the redistricting process. Meetings may be scheduled both virtually and in-person, as permitted by public health officials.
- Prioritized criteria for redistricting and satisfy the requirements of the Voting Rights Acts.
- Make modifications to the draft district boundary maps based on input from the District team and public input.
- Assist the District team as may be required in all facets of developing, adopting and implementing the final district boundary map.
- Other tasks requested by the District team that relate to the redistricting process, such as facilitating requests for additional demographic data or advising on the Voting Rights Acts.
SAMPLE
CONSULTING/ PROFESSIONAL SERVICES
AGREEMENT BETWEEN

THE SAN DIEGO UNIFIED SCHOOL DISTRICT

AND

BUSINESS NAME

THIS AGREEMENT for consulting/professional services is made by and between the San Diego Unified School District ("District"), a public school district formed and operating pursuant to the laws of the State of California and Enter Business Legal Name to include (DBA) if any, a (Corp, LLC, Partnership, etc.) whose primary place of business is located at Business Address, ("Consultant/Professional") (together sometimes referred to as the “Parties”) as of DATE, (the “Effective Date”).

RECITALS

WHEREAS, California Government Code section 53060 grants school districts the authority to contract with and employ persons for the furnishing of special services to such districts, if such persons are specially trained, experienced and competent to perform the special services requested; and

WHEREAS, Consultant/Professional is specially trained and possesses the skills, experience, education, competency, licenses and/or credentials necessary to perform the required services; and

WHEREAS, the services performed under this Agreement are or are not funded in whole or in part by any state or federal grant; and

WHEREAS, the District does not employ persons with sufficient expertise to perform the required services.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties do agree as follows:

TERMS OF AGREEMENT

SECTION 1: SERVICES
Subject to the terms and conditions set forth in this Agreement, Consultant/Professional shall provide to District the services described in the Scope of Work/Services attached as Exhibit A, attached hereto and incorporated herein, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail except provisions relating to payment.
1.1 Term. The term of this Agreement shall begin on the Effective Date and shall end on DATE. Consultant/Professional shall complete the work described in Exhibit A prior to that date, unless the term of this Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant/Professional to complete the services required by this Agreement shall not affect the District’s right to terminate the Agreement, as provided for in Section 8.

1.2 Professional Skill. It is mutually agreed by the Parties that District is relying upon the professional skill of the Consultant/Professional as a specialist in the work, and Consultant/Professional represents to the District that its work shall conform to the normal professional standards of the profession. Acceptance of the Consultant/Professional's work by the District does not operate as a release of Consultant/Professional's representations. It is intended that Consultant/Professional's work shall conform to normal standards of accuracy, completeness and coordination.

1.3 Standard of Performance. Consultant/Professional shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant/Professional is engaged in the geographical area in which Consultant/Professional practices its profession. Consultant/Professional shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant/Professional's profession.

1.4 Assignment of Personnel. Consultant/Professional shall assign only competent personnel to perform services pursuant to this Agreement. In the event that District, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant/Professional shall, immediately upon receiving notice from District of such desire of District, reassign such person or persons.

1.5 Time. Consultant/Professional shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.3 above and to satisfy Consultant/Professional's obligations hereunder.

SECTION 2: COMPENSATION
District hereby agrees to pay Consultant/Professional a sum not to exceed AMOUNT OF CONTRACT SPELLED OUT Dollars ($XX,XXX.XX) notwithstanding any contrary indications that may be contained in Consultant/Professional's proposal, for services to be performed and any permitted reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant/Professional's proposal, regarding the amount of compensation, the Agreement shall prevail. District shall pay Consultant/Professional for services rendered pursuant to this Agreement at the time and in the manner set forth in herein. The payments specified herein shall be the only payments from District to Consultant/Professional for services rendered pursuant to this Agreement. Consultant/Professional shall submit all invoices to District in the manner specified herein. Except as specifically authorized by District, Consultant/Professional shall not bill District for duplicate services performed by more than one person.
Consultant/Professional and District acknowledge and agree that compensation paid by District to Consultant/Professional under this Agreement is based upon Consultant/Professional's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant/Professional. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant/Professional and its employees, agents, and subcontractors may be eligible. District therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant/Professional shall submit invoices, not more often than once a month during the term of this Agreement for services performed plus any pre-approved reimbursable costs incurred prior to the invoice date to apinvoices@sandi.net and the below contact. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.,
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- A brief description of the work during this billing period, and each previously approved reimbursable expense; and
- The Consultant/Professional's signature.

2.2 Monthly Payment. District shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. The administrator responsible for verifying that services have been performed and authorized to approve invoices for payment is: Name and Title of District Personnel approving invoices, located at Full Mailing Address, Email Address and Phone number, District shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant/Professional.

2.3 Final Payment. District shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to District of a final invoice, if all services required have been satisfactorily performed.

2.4 Total Payment. District shall pay for the services to be rendered by Consultant/Professional pursuant to this Agreement. District shall make no payment for any extra, further, or additional services pursuant to this Agreement. In no event shall Consultant/Professional submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless this Agreement is modified prior to the submission of such an invoice by a properly executed amendment.

2.5 Hourly Fees. No hourly fees are billable for work performed as part of the Scope of Work/Services unless such fees are specified in Exhibit A.

2.6 Reimbursable Expenses. Reimbursable expenses, if any, are specified in Exhibit A, and are included in the total amount of compensation provided under this Agreement which shall not be exceeded.
2.7 **Payment of Taxes.** Consultant/Professional is solely responsible for the payment of any applicable federal or state taxes incurred under this Agreement.

2.8 **Payment upon Termination.** In the event that the District or Consultant/Professional terminates this Agreement pursuant to Section 8, the District shall compensate the Consultant/Professional for all outstanding costs incurred for work satisfactorily completed as of the date of written notice of termination. Consultant/Professional shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

2.9 **Authorization to Perform Services.** The Consultant/Professional is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the District Representative.

SECTION 3: FACILITIES AND EQUIPMENT

Except as set forth herein, Consultant/Professional shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement, District shall make available to Consultant/Professional only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

District shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant/Professional's use while consulting with District employees and reviewing records and the information in possession of the District. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of District. In no event shall District be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, telephone or other communication charges, vehicles, and reproduction facilities.

SECTION 4: INSURANCE REQUIREMENTS

Before beginning any work under this Agreement Consultant/Professional, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance identified in **Exhibit B** against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant/Professional and its agents, representatives, employees, and subconsultants. Consistent with the following provisions, Consultant/Professional shall provide Certificates of Insurance (attached as **Exhibit C**), indicating that Consultant/Professional has obtained or currently maintains insurance that meets the requirements of this Agreement and that is in a form satisfactory to the District. Consultant/Professional shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant/Professional's price. Consultant/Professional shall not allow any subconsultant(s) to commence work until Consultant/Professional has obtained all insurance required herein for the subconsultant(s).

*** Include the Contract # on all Certificates of Insurance, Exhibit C. ***
SECTION 5: INDEMNITY AND RESPONSIBILITIES

To the fullest extent allowable by law, Consultant/Professional will defend, indemnify and hold harmless the District, its Board of Education members, officers, agents, employees and directors (hereinafter “Indemnified Parties”) from and against any claim, demand, loss or liability (hereinafter “Claim”) or any nature or cause whatsoever, and whether actual or alleged, arising from or in any way connected with the performance of this Agreement, including, but not limited to any Claim for personal injury, death, property damage, loss of profits, infringement upon intellectual property rights, failure to comply with all of the requirements contained in Education Code, section 45125.1 and/or disclosure of confidential information which might be obtained by Consultant/Professional during performance of this Agreement; except where such Claim is caused by the sole negligence or willful misconduct of the Indemnified Parties.

5.1 Selection of Defense Counsel. If any action or proceeding, whether judicial, administrative, arbitration or otherwise, shall be commenced on account of any claim, demand or liability covered by this Agreement, and such action or proceeding names any of the Indemnified Parties as a party thereto, the Consultant/Professional shall, at its sole cost and expense, defend the Indemnified Parties in such action or proceeding with counsel reasonably satisfactory to the Indemnified Parties named in such action or proceeding.

5.2 Payment of Judgment. In the event that there shall be any judgment, award, ruling, settlement, or other relief arising out of any such action or proceeding to which any of the Indemnified Parties are bound by, Consultant/Professional shall pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief and shall indemnify and hold harmless the Indemnified Parties from any and all liability or responsibility arising out of any such judgment, award, ruling, settlement or relief.

5.3 Indemnification Limitations. The foregoing obligation(s) of Consultant/Professional shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the gross negligence or willful misconduct of the District or its officers, employees, agents, or volunteers and (2) the actions of Consultant/Professional or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant/Professional to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by District of insurance certificates and endorsements required under this Agreement does not relieve Consultant/Professional from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant/Professional acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

5.4 Liability for Employment Related Obligations. In the event that Consultant/Professional or any employee, agent, or subcontractor of Consultant/Professional providing services under this Agreement is determined by a court of competent jurisdiction, the California Public Employees Retirement System (PERS) or the California State Teachers Retirement System to be eligible for enrollment as an employee of District, Consultant/Professional shall indemnify, defend, and hold harmless District for the payment of any employee and/or employer contributions for such retirement benefits on behalf of Consultant/Professional or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of District.
5.5 **Civil Code Exclusions.** Notwithstanding the forgoing, to the extent this Agreement is a “construction contract” as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of Consultant/Professional to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

5.6 **Tender of Defense and Indemnity.** The Consultant/Professional’s obligation to defend and indemnify shall not be excused because of the Consultant/Professional’s inability to evaluate liability or because the Consultant/Professional evaluates liability and determines that the Consultant/Professional is not liable to the claimant. The Consultant/Professional must respond within 30 days to the tender of any claim for defense and indemnity by the District. If the Consultant/Professional fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant/Professional under and by virtue of this Agreement as shall reasonably be considered necessary by the District, may be retained by the District until disposition has been made of the claim or suit for damages, or until the Consultant/Professional accepts or rejects the tender of defense, whichever occurs first.

5.7 **Survival.** The terms of this section 5 shall survive termination of this Agreement.

**SECTION 6: STATUS OF CONSULTANT/PROFESSIONAL**

6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant/Professional shall be an independent contractor and shall not be an employee of District. District shall have the right to control Consultant/Professional only insofar as the results of Consultant/Professional's services rendered pursuant to this Agreement and assignment of personnel pursuant to subparagraph 1.4. Except as expressly provided in this section 6.1, District shall not have the right to control the means by which Consultant/Professional accomplishes services rendered pursuant to this Agreement. Notwithstanding any other District, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant/Professional and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by District, including but not limited to, eligibility to enroll in the California Public Employees Retirement System (PERS)(or other defined benefit employee retirement plans) as an employee of District and entitlement to any contribution to be paid by District for employer contributions and/or employee contributions for PERS or other benefits.

6.2 **Consultant/Professional No Agent.** Except as District may specify in writing, Consultant/Professional shall have no authority, express or implied, to act on behalf of District in any capacity whatsoever as an agent. Consultant/Professional shall have no authority, express or implied, pursuant to this Agreement to bind District to any obligation whatsoever.

**SECTION 7: LEGAL REQUIREMENTS**

7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.

7.2 **Compliance with Applicable Laws.** Consultant/Professional and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
7.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant/Professional and any subconsultant(s) shall comply with all applicable rules and regulations to which District is bound by the terms of such fiscal assistance program.

7.4 Licenses and Permits. Consultant/Professional represents and warrants to District that Consultant/Professional and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of what-so-ever nature that are legally required to practice their respective professions. Consultant/Professional represents and warrants to District that it and its employees, agents, any subconsultant(s) shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant/Professional and any subconsultant(s) shall obtain and maintain during the term of this Agreement valid Business Licenses from the City of San Diego.

7.5 Nondiscrimination and Equal Opportunity. Consultant/Professional shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant/Professional under this Agreement. Consultant/Professional shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant/Professional thereby.

Consultant/Professional shall include the provisions of this subsection in any subcontract approved by the District Representative or this Agreement.

7.6 Electronic Signature. Consultant/Professional consents to conducting transactions for this Agreement via electronic signature, which will have the same validity and effect as a signature affixed by hand, through an electronic system established and maintained by the District.

_________________________(Initials).

7.6.1 Under the Uniform Electronic Transactions Act (California Civil Code sections 1633.1- 1633.17), Consultant/Professional agrees to conduct transactions relating to the Agreement by use of an electronic signature, which is an electronic mark that is held to the same standard as a legally binding equivalent of my handwritten signature. Consultant/Professional further agrees that, for the purposes of authorizing, approving, and authenticating records, information, and transactions relating to the Contract, the electronic signature has the full force and effect of a signature affixed by hand to a paper document. Consultant/Professional agrees that the transactions conducted electronically relating to this Agreement shall be binding upon me.
7.6.2 Consultant/Professional agrees that the electronic signature will be valid from date of issuance until the end of the Agreement term or earlier if it is revoked or terminated under this Agreement. Consultant/Professional understands that the District may suspend, terminate, or revoke the electronic signature in its reasonable discretion.

7.6.3 Consultant/Professional will use the electronic signature to establish identity and sign electronic documents and forms relating to the Agreement and Amendments. Consultant/Professional is solely responsible for protecting the electronic signature. If Consultant/Professional suspects or discovers that the electronic signature has been stolen, lost, used by an unauthorized party, or otherwise compromised, then Consultant/Professional will immediately notify the Strategic Sourcing and Contracts Officer or his/her designee and request that the electronic signature be revoked. Consultant/Professional will then immediately cease all use of the electronic signature. Consultant/Professional agrees to keep the electronic signature secret and secure by taking reasonable security measures to prevent it from being lost, modified, or otherwise compromised, and to prevent unauthorized disclosure of, access to, or use of it or of any media on which information about it is stored.

SECTION 8: TERMINATION AND MODIFICATION

8.1 Termination. District may cancel this Agreement, without cause, upon thirty (30) days' written notice to Consultant/Professional. In the event of termination, Consultant/Professional shall be entitled to compensation for services performed to the effective date of termination; District, however, may condition payment of such compensation upon Consultant/Professional delivering to District any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant/Professional or prepared by or for Consultant/Professional or the District in connection with this Agreement.

8.2 Extension. District may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein.

8.3 Amendments. The Parties may amend this Agreement only by a writing signed by all the Parties and approved by District's governing board.

8.4 Assignment and Subcontracting. District and Consultant/Professional recognize and agree that this Agreement contemplates personal performance by Consultant/Professional and is based upon a determination of Consultant/Professional's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to District for entering into this Agreement was and is the professional reputation and competence of Consultant/Professional. Consultant/Professional may not assign this Agreement or any interest therein without the prior written approval of the District Representative. Consultant/Professional shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the District Representative.
8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between District and Consultant/Professional shall survive the termination of this Agreement.

8.6 **Options upon Breach by Consultant/Professional.** If Consultant/Professional materially breaches any of the terms of this Agreement, District's remedies shall include, but not be limited to, the following:

- Immediately terminate the Agreement;
- Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant/Professional pursuant to this Agreement;
- Retain a different Consultant/Professional to complete the work described in *Exhibit A* not finished by Consultant/Professional; and/or
- Charge Consultant/Professional the difference between the cost to complete the work described in *Exhibit A* that is unfinished at the time of breach and the amount that District would have paid Consultant/Professional pursuant to Section 2 if Consultant/Professional had completed the work.

**SECTION 9: KEEPING AND STATUS OF RECORDS**

9.1 **Records Created as Part of Consultant/Professional's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant/Professional prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the District. Consultant/Professional hereby agrees to deliver those documents to the District upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the District and are not necessarily suitable for any future or other use. District and Consultant/Professional agree that, until final approval by District, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties unless required by law.

9.2 **Consultant/Professional's Books and Records.** Consultant/Professional shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the District under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment under the Agreement.

9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant/Professional to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the District. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS ($10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of District or as part of any audit of the District, for a period of three (3) years after final payment under the Agreement.
9.4 Records Submitted in Response to an Invitation to Bid or Request for Proposals. If this Agreement was procured through a Request for Proposals (RFP) or invitation to bid issued by the District, all documents submitted in response to the RFP or invitation to bid become the exclusive property of the District. At such time as the District selects a bid, all proposals received become a matter of public record, and shall be regarded as public records, with the exception of those elements in each proposal that are defined by Consultant/Professional and plainly marked as "Business Secret" or Trade Secret." Any proposal that contains language purporting to render all or significant portions of the proposal "Confidential," "Trade Secret," or "Proprietary," shall be regarded as non-responsive.

The District shall not be liable or in any way responsible for the disclosure of any such proposal or portions thereof, if Consultant/Professional has not plainly marked it as a "Trade Secret" or "Business Secret" or if disclosure is required under the Public Records Act.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the District may not be in a position to establish that the information that a prospective bidder submits is a trade secret. If a request is made for information marked "Trade Secret" or "Business Secret," and the requester takes legal action seeking release of the materials it believes does not constitute trade secret information, by submitting a proposal, Consultant/Professional agrees to indemnify, defend and hold harmless the District, its agents and employees, from any judgment, fines, penalties, and award of attorneys’ fees awarded against the District in favor of the party requesting the information, and any and all costs connected with that defense. This obligation to indemnify survives the District's award of the any subsequent agreement. In submitting a proposal, Consultant/Professional agrees that this indemnification survives as long as the trade secret information is in the District's possession, which includes a minimum retention period for such documents.

9.5 Confidentiality of Student Records. If Consultant/Professional will have access to student records, Consultant/Professional agrees to comply with the Family Educational Rights and Privacy Act of 1974, and all requirements imposed by or pursuant to regulation of the Department of Education and the District (including but not limited to Administrative Regulation and Procedures No. 5125 and 5125.1) to the end that the rights and privacy of the students enrolled in the District and of their parents are not violated or invaded. This assurance is given to obtain access to individual student data for the purpose of using said data to fulfill contractual obligations with the District. The provisions of the Family Educational Rights and Privacy Act of 1974 include, but are not limited to, ensuring that:

No identification of students or their parent/guardians by persons other than representatives of Consultant/Professional is permitted;

- The individual student data will be destroyed when no longer needed for the purpose(s) for which they were obtained;
- No access to individual student data shall be granted by Consultant/Professional to any other person, persons, agency or organization without the written consent of the pupil’s parent/guardian, except for sharing with other persons within the District or representatives of Consultant/Professional so long as those persons have a legitimate interest in the information.
Consultant/Professional recognizes and agrees that such access will be extended in reliance on representations made in this assurance, and that the District shall have the right to enforcement of this assurance, or revocation of such access (including return of all physical forms of such data and destruction of all such electronic data) immediately upon evidence of noncompliance by Consultant/Professional. This assurance is binding Consultant/Professional on and such persons as may be employed by Consultant/Professional to assist in any phase of the contractual obligation to the District.

9.6 Screening Requirements. Consultant/Professional shall comply with the requirements of California Education Code sections 45125.1, 44237, 35021.1, and 35021.2, including, but not limited to: obtaining clearance from the California Department of Justice (hereinafter referred to as “CDOJ”) and tuberculosis (“TB”) clearance for Consultant/Professional’s employees, volunteers, and independent contractors prior to providing service to any District student. One or both of these requirements may be waived if the District, in its sole and absolute discretion, determines that Consultant/Professional and/or its employees, volunteers, and any independent contractors/consultants will not be performing services on District campuses and/or will not have any contact with District students, as applicable.

9.6.1 CDOJ clearance shall include a determination that any such person has not been convicted of a violent or serious felony as those terms are defined in California Education Code section 44237(h), unless despite such person’s conviction of a violent or serious felony, he or she has met the criteria to be eligible for employment pursuant to California Education Code section 44237 (i) or (j).

- Consultant/Professional shall make a request for subsequent arrest service from the CDOJ as required by California Penal Code section 11105.2 with respect to each such person.

- Upon request of the District Representative, Consultant/Professional shall certify in writing that Consultant/Professional has at all times complied with this section of the Agreement.

- Consultant/Professionals employing or staffing current District or other school district’s employees must obtain clearance from the CDOJ verified with Consultant/Professional’s Originating Agency Identifier number (“ORI”). Consultant/Professionals with employees who are residents of other states in the United States shall comply with the above identified statutory requirements by obtaining criminal record histories for their employees through the employee’s state of residence equivalent to the CDOJ including subsequent arrest information or by obtaining annual FBI criminal records histories for their employees.
If Consultant/Professional's services are limited to online services, contact with District students shall also include electronic contact, and Consultant/Professional shall comply with the requirements for CDOJ clearance described in this section. In such cases, employees having only electronic or telephone contact with district students shall not be required to obtain TB clearance.

Administrative staff for Consultant/Professional not in contact with students but having access to confidential student information shall comply with the requirements for CDOJ clearance described in this section. In such cases, employees only having access to confidential District student information shall not be required to obtain TB clearance.

9.6.2 The Consultant/Professional shall provide each tutor, site director, and any other employee(s) in contact with District students with an identification badge that exhibits the Consultant/Professional's company name, employee name, and a picture of the employee.

9.6.3 **Tuberculosis Examination.** Consultant/Professional and its subconsultant(s) shall ensure that all persons performing services under this Agreement will provide a tuberculosis (TB) certificate of clearance prior to commencing services pursuant to this Agreement. Consultant/Professional shall ensure that it will not place any person at a school without a valid TB certificate on file showing that the employee was examined and found to be free from active tuberculosis, as defined in Education Code Section 49406.1(a).

**Section 10. MISCELLANEOUS PROVISIONS**

10.1 **Attorneys’ Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret a provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys’ fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of San Diego or in the United States District Court for the Southern District of California.

10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
10.6 **Use of Recycled Products.** Consultant/Professional shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10.7 **Conflict of Interest.** Consultant/Professional may serve other clients, but none whose activities or whose business, regardless of location, would place Consultant/Professional in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 et seq. Consultant/Professional shall not employ any district official in the work performed pursuant to this Agreement. No officer or employee of the District shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 et seq. Consultant/Professional hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the District. If Consultant/Professional was an employee, agent, appointee, or official of the District in the previous twelve months, Consultant/Professional warrants that it did not participate in any manner in the forming of this Agreement. Consultant/Professional understands that if this Agreement is or was made in violation of Government Code §1090 et seq. the entire Agreement is void and Consultant/Professional will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant/Professional will be required to reimburse the District for any sums paid to the Consultant/Professional. Consultant/Professional understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California. By initialing below, the Consultant/Professional and the officer or employee of the District warrants that they do not have any financial interest in this Agreement that would violate California Government Code Sections 1090 et seq.

_________ (Consultant Initial) ____________ (District Originator Initial)

10.8 **Solicitation.** Consultant/Professional agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 **District Representative.** This Agreement shall be administered by Name, Title of District Representative, Full Mailing Address, Email and Phone number. (Contracting Officer’s Technical Representative). All daily operational correspondence shall be directed to or through the District Representative or his or her designee. Further, if applicable to the services to be performed, Consultant/Professional will assign one staff person or "account manager" to coordinate the work of any subconsultant(s) and support staff performing work under this Agreement.

10.10 **Non-Funding.** Notwithstanding any other provision to the contrary, if for any fiscal year of this Agreement the Board of Education for any reason fails to appropriate or allocate funds for future payments under this Agreement, the District will not be obligated to pay the balance of funds remaining unpaid beyond the fiscal period for which funds have been appropriated and allocated.
10.11 *Notices*. Written contract notices shall be addressed as follows:

<table>
<thead>
<tr>
<th>To District:</th>
<th>To Consultant/Professional:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andrea R. O’Hara, M.A.</td>
<td>Business Name</td>
</tr>
<tr>
<td>Strategic Sourcing and Contracts Officer</td>
<td>Point of Contact Name</td>
</tr>
<tr>
<td>2351 Cardinal Lane, Building M</td>
<td>Address</td>
</tr>
<tr>
<td>San Diego, CA. 92123</td>
<td>City, State &amp; Zip</td>
</tr>
<tr>
<td>(858) 522-5808 - Phone</td>
<td>Phone #</td>
</tr>
<tr>
<td><a href="mailto:dgiolzetti@sandi.net">dgiolzetti@sandi.net</a></td>
<td>Email Address</td>
</tr>
</tbody>
</table>

10.12 *Integration*. This Agreement, including exhibits, represents the entire and integrated agreement between District and Consultant/Professional and supersedes all prior negotiations, representations, proposals or agreements, either written or oral.

10.13 *Exhibits*. This Agreement includes the following exhibits, all of which are incorporated into the Agreement as if fully set forth herein:

- **Exhibit A**: Scope of Work/Services and Payment Terms
- **Exhibit A-1**: Consultant/Professional Proposal
- **Exhibit B**: Insurance Requirements
- **Exhibit C**: Certificates of Insurance

10.14 *Counterparts*. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

THIS SECTION INTENTIONALLY LEFT BLANK
This Agreement is effective only if signed below by the duly authorized representatives of the Parties. By signing this Agreement, Consultant/Professional represents that it has the legal authority to enter into this Agreement and to bind the entity to the terms set forth herein.

<table>
<thead>
<tr>
<th>CONSULTANT/PROFESSIONAL COMPANY NAME</th>
<th>SAN DIEGO UNIFIED SCHOOL DISTRICT</th>
</tr>
</thead>
<tbody>
<tr>
<td>By: ______________________________</td>
<td>By: ____________________________</td>
</tr>
<tr>
<td>(name of person signing)</td>
<td>Andrea R. O'Hara, M.A.</td>
</tr>
<tr>
<td>(title of person signing)</td>
<td>Strategic Sourcing and Agreements Officer</td>
</tr>
<tr>
<td>(Address of Person signing)</td>
<td>2351 Cardinal Lane, Building M</td>
</tr>
<tr>
<td>Tel: (telephone number)</td>
<td>San Diego, CA 92123</td>
</tr>
<tr>
<td>Email: (email address)</td>
<td>Tel: 858-522-5808</td>
</tr>
<tr>
<td></td>
<td>Email: <a href="mailto:dgiolzetti@sandi.net">dgiolzetti@sandi.net</a></td>
</tr>
<tr>
<td></td>
<td>San Diego Unified School District</td>
</tr>
</tbody>
</table>

Date: ____________________________  Date: ____________________________

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<tr>
<th>APPROVED AS TO FORM AND LEGALITY</th>
<th>Approved in a public meeting of the Board of Education of the San Diego Unified School District on</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sandra T. M. Chong, Assistant General Counsel II</td>
<td>Marty Stultz, Board Action Officer</td>
</tr>
<tr>
<td>San Diego Unified School District</td>
<td>San Diego Unified School District Board of Education</td>
</tr>
</tbody>
</table>

Date: ____________________________  Date: ____________________________

<table>
<thead>
<tr>
<th>APPROVED TO CONTENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name, Title and Dept.</td>
</tr>
<tr>
<td>San Diego Unified School District</td>
</tr>
</tbody>
</table>

Date: ____________________________
EXHIBIT B

INSURANCE REQUIREMENTS

1.0 Workers' Compensation. Consultant/Professional shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant/Professional. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS ($1,000,000.00) per accident. In the alternative, Consultant/Professional may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the District's Risk Manager. The insurer, if insurance is provided, or the Consultant/Professional, if a program of self-insurance is provided, shall waive all rights of subrogation against the District and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

2.0 Commercial General and Automobile Liability Insurance.

2.1 General requirements. Liability and Automobile carriers shall possess a current Best's Key Rating of A Minus (A-), VII or better.

2.1.1 Commercial General Liability (including operations, products, and completed operations) $2,000,000 per occurrence/$4,000,000 aggregate for bodily injury, personal injury and property damage. If insurance is on a claims made policy, tail coverage for the duration of the Agreement must be provided. Such coverage shall be retroactive to on or before the Effective Date of this Agreement.

2.1.2 Automobile Liability including Owned, Non-owned, Hired vehicles: Consultant/Professional, at its own cost and expense, shall maintain automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000.00) per accident, combined single limits coverage for risks associated with the work contemplated by this Agreement.

2.1.3 If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting there from, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.
2.1.4 **Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 or GL 0002 (most recent editions) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 8 and 9. No endorsement shall be attached limiting the coverage.

2.1.5 **Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy.

2.1.5.1 The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

2.1.5.2 Any failure of Consultant/Professional to comply with reporting provisions of the policy shall not affect coverage provided to District and its officers, employees, agents, and volunteers.

2.1.6 **Insurance shall include coverage for sexual abuse and molestation allegations up to the full policy limit.** [This requirement may be WAIVED by District if there is no direct student contact.]

For vendors and/or service providers who provide software development or installation, storage (including cloud computing), or host, use or access District data:

2.1.7 **Cyber Risk or Cloud Insurance:** Where the services provided in the Agreement relate to software development, software installation, storage of electronic data (including cloud computing), the hosting of District data, the use of District data or access to District data, including student information, the Consultant/Professional (service provider) shall provide Cyber Risk/Cloud Insurance as specified in this Section 2.1.7. Subject to limits of at least $1,000,000 per claim/$2,000,000 aggregate to be maintained for the duration of the Agreement and three years following its termination, to respond to privacy and network security liability claims including, but not limited to:

- Liability arising from theft, dissemination, and/or use of District confidential information, including but not limited to bank, credit card account, student records, and personally identifiable information such as name, address, social security numbers, etc., regardless of how the information is stored or transmitted.
- Network security liability arising from (i) the unauthorized access to, use of, or tampering with computer systems, including hacker attacks; or (ii) the inability of an authorized third party to gain access to supplier systems and/or District date, including denial of service, unless caused by a mechanical or electrical failure.
- Liability arising from the introduction of a computer virus into, or otherwise causing damage to an employee’s or third person’s computer, computer system, network, or similar computer-related property and the data, software, and programs thereon.
• Crisis-management expenses (i.e. notification, public relations, reputation damage, forensics, etc.) for a data breach.

3.0 Professional Liability Insurance.

3.1 General requirements. Consultant/Professional, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than TWO MILLION DOLLARS ($2,000,000) covering the licensed professionals’ errors and omissions. Any deductible or self-insured retention shall not exceed $150,000 per claim and, as provided for herein, and must be disclosed to and approved by District.

3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

3.2.1 The retroactive date of the policy must be shown and must be on or before the Effective Date of the Agreement.

3.2.2 Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work.

3.2.3 If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant/Professional must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The District shall have the right to exercise, at the Consultant/Professional’s sole expense, any extended reporting provisions of the policy, if the Consultant/Professional cancels or does not renew the coverage.

3.2.4 A copy of the claim reporting requirements must be submitted to the District prior to the commencement of any work under this Agreement.

4.0 All Policies Requirements.

4.1 Acceptability of insurers. All required coverages must be provided by insurers licensed to conduct business in the State of California and rated “A-, VII” or better by the current Best’s Key Rating Guide. Non-admitted carriers must be included on the most recent California List of Accepted Surplus Lines Insurers (LASLI list) and otherwise satisfy all rating requirements.

4.2 Verification of coverage. Certificates of Insurance shall be filed with the District’s Strategic Sourcing and Contracts Department. The District reserves the right to require complete copies of all required insurance policies at any time. Consultant/Professional shall provide, upon District request, complete copies of all policies delivered to Consultant/Professional by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the District does not receive the required insurance
documents prior to the Consultant/Professional beginning services, it shall not waive the Consultant/Professional's obligation to provide them.

4.3 Notice of Reduction in or Cancellation of Coverage. Certificates of Insurance shall include the following clause: “This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the San Diego Unified School District stating the date of cancellation or reduction. The date of cancellation or reduction may not be less than 15 days after the date of mailing the notice.” Certificates of Insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, expiration date, and the cancellation and reduction notice.

4.4 Additional insured; primary insurance. District and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant/Professional, including the insured's general supervision of Consultant/Professional; products and completed operations of Consultant/Professional, as applicable; premises owned, occupied, or used by Consultant/Professional; and automobiles owned, leased, or used by the Consultant/Professional in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to District or its officers, employees, agents, or volunteers. A certified endorsement must be attached to all policies stating that coverage is primary insurance with respect to the District and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the District shall be called upon to contribute to a loss under the coverage.

4.5 Deductibles and Self-Insured Retentions. Consultant/Professional shall disclose to and obtain the approval of District for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, Consultant/Professional may increase such deductibles or self-insured retentions with respect to District, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant/Professional procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

4.6 Variation. The District may approve a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that the District's interests are otherwise fully protected.

5.0 Remedies. In addition to any other remedies District may have if Consultant/Professional fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, District may, at its sole option exercise any of the following remedies, which are alternatives to other remedies District may have and are not the exclusive remedy for Consultant/Professional's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
Order Consultant/Professional to stop work under this Agreement or withhold any payment that becomes due to Consultant/Professional hereunder, or both stop work and withhold any payment, until Consultant/Professional demonstrates compliance with the requirements hereof; and/or

Terminate this Agreement.