



Preparing every student to thrive in a global society.

REQUEST FOR PROPOSAL  
RFP-04-17-18  
For  
PERFORMANCE AUDIT SERVICES  
For  
PROPOSITION 39 BOND FUNDS (Measure "G", "E", "I" & Tech "I")

**September 07, 2017**

East Side Union High School District is seeking proposals from comprehensive management consulting firms to perform for East Side Union High School District a Performance Audit Service for Measure "G", Measure "E", Measure "I", and Tech "I". The work should include performance and operational evaluations of school district facilities programs. The performance audits shall provide practical recommendations that result in improved performance and productivity of school facilities programs following GASB guidelines.

**Introduction to East Side Union High School District**

The East Side Union High School District (ESUHSD), established in 1950, serves over 24,000 students in grades 9-12 at 12 comprehensive high schools, five alternative education sites, seven child development centers and six independent charter schools. The District offers a robust career technical education program through its magnet programs, CA Academies, and an ROP JPA. The Adult Education Program serves an additional 8,100 students. The District has the fourth largest high school enrollment in the State and the largest in Northern California.

Located in the city of San Jose, Santa Clara County (Silicon Valley), the District encompasses 180 square miles, which geographically parallels approximately 14 miles of the East foothills of the valley. Within the East Side community of San Jose there are 161,092 households with a population of 574,502 residents. Seven feeder elementary districts send students to East Side Union High School District. The community of this urban school district prides itself on its ethnic and cultural diversity. It is considered an ideal community because of its appealing climate, geographical location and proximity to cultural centers and numerous institutions of higher learning.

**Information about the Capital Improvement Program**

The District's Capital Improvement Program is a complex portfolio of projects, spanning multiple years and currently funded by local general obligation bond measures G and E, and now Bond Measure I, OPSC school facility program grants, and other minor funding streams. Since 1991, the community has supported ESUHSD's growth and modernization through a series of local general obligation bonds:

- Measure G - \$298 Million, voters approved 2004; (\$11,405,824 remaining balance)
- Measure E - \$349 Million, voters approved 2008; (\$81,650,602 remaining balance)
- Measure I - \$120 Million, voters approved November 2012; (\$66,144,639 remaining balance)

East Side Union High School District Board of Trustees

Frank Biehl, President

J. Manuel Herrera, Vice President

Pattie Cortese, Clerk

Lan Nguyen, Member

Van T. Le, Member

Chris D. Funk, Superintendent

830 N. Capitol Ave.

San Jose, CA 95133

T 408.347.5000

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esuhd.org

- Measure I Technology, \$113.2 Million, voters approved 2014 (\$97,000,000 remaining balance)

Since 1999 there has been (2) new sites/campuses constructed, over one hundred (100) construction projects completed, twenty five (25) projects currently under construction, eight (8) projects out for bid as of the spring 2017, and \$30 Million plus commitment made to upgrades in technology throughout the District. Further information about projects is available on the District's website at:

<http://facilities.esuhdsd.org/wp-content/uploads/2017/03/2017-02-CIP-Monthly-Status-Rpts-DW-V1.2017.0314.pdf>

Construction work performed under the District's Bond Program is subject to a Project Labor Agreement, which has been in place since 2003 and has been amended to include Measure Z; board approved August 17, 2017.

The bond program allows the District to fund modernization, new construction, and other capital projects to ensure that students attending East Side Union High School District schools are housed in safe, healthy, and quality learning environments. The current Bond Program Manager is SGI Construction Management.

## Scope of Services

The scope of services requested to include an overall evaluation of the bond program, a list of bond areas needing improvements and recommendations for improvements. The selected firm must present their report and recommendations to our Superintendent's Council, Board of Trustees, Internal Audit Committee, and Citizen's Bond Oversight Committee as shown in the estimated timeline. The report shall contain the current management structure's evaluation and analysis of the following major areas incorporated in the Performance Audit:

- Bond Management Plan/Program including Quality Control
- Performance Audit Fiscal Years 2015-2016 and 2016/2017
- Design and Construction Schedules and Timelines
- Proposed Design and Construction Cost Budgets
- Payment Procedures
- Use of Best Practices regarding the Planning and Construction of School Facilities
- Procedures for claims avoidance
- School management and construction Budgets
- Change order/claims procedures and results
- Current programmatic goals to ensure compliance with State law, guidelines, and funding formulas and District guidelines for bidding and procurement.
- "Best practices" for management of procurement of materials and services in order to promote and increase efficient use of bond funds.
- Evaluation of Public Outreach Program
- Effectiveness of communication channels among all stakeholders within the Bond Program

## General Instructions

Please email your written proposal by **4:00pm Thursday, September 28, 2017** to Janice Unger, Director of Purchasing & Capital Accounting. Include in your proposal details about the proposed individuals assigned to the Audit, including resumes, a fee proposal, along with any clarifications, exclusions, or additional information as required to provide a clear proposal of services. Provide project experience & references along with a work plan/methodology.

1. Questions and Clarifications. All questions and clarification regarding this RFP shall be made IN WRITING and emailed to the persons listed below no later than **Thursday, September 21, 2017 by 4:00 pm**. All Emails received will be acknowledged. RFI's will be answered by **Monday, September 25, 2017 by 4:00pm**.

Email: Janice Unger at [ungerj@esuhsd.org](mailto:ungerj@esuhsd.org)  
Copy: Tu Nguyen at [nguyen.tu@esuhsd.org](mailto:nguyen.tu@esuhsd.org)

Phone: 408-347-5079 Fax: 408-347-5075

2. ESUHSD is responsible only for what is expressly stated in this RFP and any authorized written addenda thereto. ESUHSD is not responsible for and will not be bound by any person not authorized to act on its behalf.
3. *As of the Issuance date of this RFP and continuing until the final date for submission of proposals, contact with ESUHSD employees is strictly limited. All personnel representing ESUHSD are specifically directed not to hold meetings, conferences or technical discussions with any consultant for purposes of responding to this RFP. Any consultant found to be acting in any way contrary to this directive will be disqualified from entering into any contract that may result from this RFP.*
4. The Consultant firm shall maintain at all times adequate insurance to protect the District from claims under Worker's Compensation Acts, and from claims for damages for personal injury, including death, and damage to property, which may arise from operations under the Contract. The Consultant firm is required to file with the District certificates of insurance naming the East Side Union High School District, its Board, officers, employees, and agents as additional insured parties to the coverage, prior to the start of work for:
  - a. Worker's Compensation and Employer's Liability Insurance, Broad form Comprehensive General Liability Insurance, occurrence coverage, with a combined single limit of liability not less than \$2,000,000.00.

#### Proposal Submission Instruction:

- a. Complete your fee proposal on your firm's letterhead.
  - b. Attach updated résumés for each proposed individual assigned to audit.
  - c. Exhibit 1 – Consultant Information/Signature Page
  - d. Exhibit 2 - Conflict of Interest Form. (Complete and sign the form for each individual that would be assigned to this engagement and include with your Performance Audit Proposal).
  - e. Attachment A – Administrative & Legal Requirements
2. No Consultant may withdraw any proposal for a period of ninety (90) calendar days after the date set for the receiving of the proposal.
  3. Any proposal received after the due date and time cannot be accepted.
    - a. Proposal must be submitted no later than **4:00 PM on Thursday, September 28, 2017.**

## Evaluation Criteria

1. Evaluation of proposals will include the following factors:
  - a. Consultant's Proposed Individuals.
  - b. Consultant's Reference Projects.
  - c. Consultant's past performance with ESUHSD; if applicable
  - d. Consultant's proposed costs.

Proposals will be review by the District's Business Services Department personnel.

### Estimated Timeline

1. September 07, 2017 - Release of Request for Proposals.
2. September 21, 2017 by 4:00 pm – Request for Information (RFI) must be submitted to ESUHSD.
3. September 25, 2017 by 4:00 pm – Last response to Request for Information (RFI) from ESUHSD.
4. **September 28, 2017 by 4:00 pm - Proposals due (electronically).**
5. October 12, 2017 - Recommendations to Board of Trustees to award.
  
6. January 29, 2018 – Present draft audit report to District's Superintendent's Council for review.
7. March 22, 2018 – Present final report to Board of Trustees
8. March 27, 2018 – Present results to the Internal Audit Committee meeting
9. April 11, 2018 – Present results to the Citizen's Bond Oversight Committee

### Contract Document

1. Consultant who is awarded services under this RFP will be required to sign a Board Approved Contract Services Agreement.

### Reservations

With respect to this RFP, ESUHSD reserves certain rights at any time as follows:

1. Reject any proposal without indicating any reason for such rejection;
2. Waive or correct any minor or inadvertent defect, irregularity or technical error in a proposal, or in the RFP process, or as part of any subsequent contract negotiation;
3. Request that consultants supplement or modify all or certain aspects of their proposals or other documents or materials submitted;
4. Request the consultant make an oral and/or written presentation if more information is deemed necessary;
5. Terminate this RFP and issue a new RFP;
6. Modify the selection process, the specifications or requirements for materials or services, or the content or format of the proposals;
7. Extend a deadline specified in this RFP, including deadlines for accepting proposals;
8. Terminate failed negotiations with a consultant without liability, and negotiate with other consultants;
9. Disqualify any consultant on the basis of a real or apparent conflict of interest, or evidence of collusion that is disclosed by the proposal or other data available to ESUHSD;
10. Request that services be provided by certain staff of a consultant, or request that certain staff of a consultant be excluded from providing services as determined by ESUHSD to be in its best interest;
11. Reject a consultant's proposal where the consultant is in breach of, or in default under, any other agreement with the ESUHSD;
12. Award multiple contracts if it is deemed necessary to provide the specified services.

END OF DOCUMENT

**Attachment A**  
**Administrative and Legal Requirements**  
**Page 1 of 4**

**1. Fingerprinting and Criminal Records Check.**

Consultant shall comply with the provisions of Education code section 45125.1 regarding the submission of employee fingerprints with the California Department of justice and the completion of criminal background investigations of its employees. Consultant shall not permit any employees to have any contact with East Side Union High School District (ESUHSD) pupils or be present on any ESUHSD school site until such time as Consultant has verified in writing to the governing board of the ESUHSD that such employee has not been convicted of a felony as defined in Education code 45125.1. Consultant's responsibility shall extend to all employees, subcontractors and employees of subcontractors regardless of whether such individuals are paid or unpaid, concurrently employed by the ESUHSD and/or acting as independent Consultants of the Consultant. Verification of compliance with this section shall be provided in writing to the ESUHSD prior to the commencement of participation in the agreed project and prior to contact with students.

**2. Health Examination.**

No person shall be initially allowed to interact with students unless he/she has placed on file with the Consultant or ESUHSD a certificate from a physician licensed under the Business and professions Code indicating that a tuberculosis examination within the past 60 days shows that he/she is free from active tuberculosis. The tuberculosis examination shall consist of an approved intradermal tuberculin test. An X-ray of the lungs shall be required only if the intradermal test is positive. (Education Code 49406).

**3. Assignment.**

This agreement shall not be assigned by the consultant in whole or in part without the consent in writing from ESUHSD.

**4. Successors and Assigns.**

This resulting contract shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

**5. Governing Law and Jurisdiction.**

The Contract(s) will be governed and interpreted under the laws of the State of California.

**6. Amendments; Waivers.**

Except as otherwise provided in the Contract including the License Contract if separate, no modification to either Contract will be binding unless in writing and signed by an authorized representative of both parties.

**7. Severability.**

If a court of competent jurisdiction holds that any provision of the Contract (s) is invalid or unenforceable, the remaining portions of the Contract(s) will remain in full force and effect, and the parties will replace the

**Attachment A**  
**Administrative and Legal Requirements**  
**Page 2 of 4**

invalid or unenforceable provision with a valid and enforceable provision that achieves the original intent of the parties and economic effect of the Contract(s).

**8. Independent Contractor**

Consultants will perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of ESUHSD. None of the provisions of any resulting contract is intended to create, nor will be deemed or construed to create, any relationship between the parties other than that of independent parties contracting with each other for purpose of effecting the provisions of any resulting contract. The parties are not, and will not be construed to be, in a relationship of joint venture, partnership or employer-employee. Neither party will have the authority to make any statements, representations or commitments of any kind on behalf of the other party, except with the written consent of the other party. Consultants will be solely responsible for the acts and omissions of its officers, agents, employees, Consultants and subcontractors, if any. ESUHSD will be solely responsible for the acts and omissions of its officers, agents, employees, Consultants and subcontractors, if any. Consultants' personnel rendering services under any resulting contract will not have any of the rights or privileges of ESUHSD or State employees. Consultants and its agents, employees and subcontractors will not have any claim against the ESUHSD or State for any employment privileges and benefits, including but not limited to vacation pay, sick leave, retirement benefits, Social Security, workers compensation, unemployment benefits, disability benefits, etc.

Notwithstanding any reference to a managed care plan or system of care, Consultants will act as an entity separate and apart from ESUHSD, and will be considered Independent Consultants for all purposes, including liability and litigation.

**9. Non-Discrimination.**

No discrimination shall be made in the employment of persons under this agreement because of the race, religion, sex, age, national origin, ancestry, political affiliations, disability, medical condition, marital status, or sexual orientation.

**10. Conflict of Interest.**

Before executing a Contract with ESUHSD, the Consultant shall disclose to the ESUHSD the identities of any board member, officer, or employee of the ESUHSD, or relatives thereof, who the Consultant knows of should know will have any financial interest resulting from this agreement.

**11. Force Majeure.**

Except for the obligation to make payments, neither party will be liable for any failure or delay in its performance under the Contract(s) due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental acts including by not limited to failure or refusal to appropriate funds or failure of the Internet (not resulting from the actions or inactions of the consultant), provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.

**Attachment A**  
**Administrative and Legal Requirements**  
**Page 3 of 4**

**12. Entire Contract.**

The final Contract(s) that is negotiated based on the results of this RFP shall supersede all previous Contracts and representations of, between or on behalf of both parties with respect to its subject. The Contract(s) shall contain all of consultant and ESUHSD warranties, understandings, terms, conditions, covenants and representations. Neither the consultant nor ESUHSD will be liable for any Contracts, warranties, understandings, terms, conditions, covenants or representations not expressly set forth or referenced in the Contract(s). Any additional provisions in purchase orders, invoices or similar documents will be unenforceable.

**13. Notices.**

Any notice under the Contract(s) must be in writing and will be deemed given upon the earlier of actual receipt or ten (10) days after being sent by first class mail, return receipt requested, to the address supplied by the consultant and to the address designated for receipt of notices, or as may be provided by both parties.

**14. Non-Collusion.**

By submitting a proposal the consultant hereby represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of the License Contract, and that the consultant firm has received from ESUHSD no incentive or special payments, or considerations not related to the provision of products and services described in the License Contract.

**15. Payment Terms.**

ESUHSD shall pay the consultant, the fees specified in the Contract(s) within thirty (30) days from the date of invoice.

**16. Cost of Bid Preparation**

ESUHSD will not pay any costs incurred in bid preparation, presentation, demonstration or negotiation, and does not commit to procure or contract for any services. All costs of proposal preparation shall be borne by the Consultant.

**17. Confidential and Proprietary Information**

All materials received in response to this Request for Qualifications/Proposal may be made available to the public. If any part of a consultant's proposal is proprietary or confidential, the consultant must so identify and so state. ESUHSD reserves the right to retain all bids submitted, whether or not the bid was selected or judged to be responsive.

Consultant understands and agrees that Consultant may have access to private or confidential information which may be owned or controlled by the ESUHSD and that such information may contain proprietary details, the disclosure of which to third parties will be damaging to the ESUHSD, its employees or students.

**Attachment A**  
**Administrative and Legal Requirements**  
**Page 4 of 4**

Consultant also understands and agrees that the disclosure of such information may violate state and/or federal law and may subject the Consultant to civil liability and/or subject the ESUHSD to a loss of State and/or Federal funding. Consequently, Consultant agrees that all information disclosed by the ESUHSD to the Consultant, including all Pupil Records (as that term is defined in California Education Code Section 49076) shall be held in confidence and used only in performance of the Contract. Consultant shall exercise the same standard of care to protect such information as is used to protect its own proprietary data.

Except as otherwise provided, all data provided to Consultant and its subcontractors and/or agents is confidential. Consultant shall become familiar with the State of California privacy laws, including HIPPA, and comply with HIPPA and all other laws pertaining to confidentiality of student information as they apply to the Consultant's performance of the work under Contract that is issued as a result of this RFQ. Consultant and the ESUHSD shall enter into a HIPAA Confidentiality Contract concurrent with the signing of a resulting Contract.

Consultant shall retain records relating to services provided under this agreement in accordance with the ESUHSD's legal obligations to retain records as set forth in 5 CCR section 16020 *et seq.*

**18. Tobacco and Drug-Free Workplace Policy.**

The District and the District's projects are "tobacco" and "drug free" workplaces and, as such, require that all persons on District Property be subject to the requirements mandated by California Government Code section 8350, *et seq.* when on District property or a project site.



**Exhibit 1**  
**Consultant Information/Signature Page**  
**Page 1 of 2**

The Consultant shall furnish the following information. Failure to comply with this requirement will render the proposal incomplete and may cause its rejection. Please fill out the un-shaded sections in the form below. Also, additional sheets may be attached if necessary. "You" or "your" as used herein refers to the consultant's firm and any of its officers, directors, shareholders, parties and principals.

Consultant Information/Signature Page		
Firm Name		
Firm Address		
Firm Telephone		
Firm Fax Number		
Firm Email		
Type of Firm (Mark an 'X' for the appropriate one)	Individual	
	Partnership	
	Corporation	
	Joint Venture	
Firm's Tax Identification Number		
Primary Contact Name		
Primary Contact's Telephone		
Primary Contact's Email		
Are you currently or within the past five (5) years been involved in litigation with any public agency particularly any school district? (Please answer Yes or No)		
If Yes, explain, and provide case name and number:		
Have you ever failed to complete a project in the last three years? (Please answer Yes or No)		
If yes, give owner and details:		

**Exhibit 1**  
**Consultant Information/Signature Page**  
**Page 2 of 2**

**Consultant's Representations**

Consultant understands, agrees, and warrants:

1. That Consultant has carefully read and fully understands the information that was provided by ESUHSD to serve as the basis for submission of this proposal.
2. That Consultant has the capability to successfully undertake and complete the responsibilities and obligations of the proposal being submitted.
3. That all information contained in the proposal is true and correct to the best of Consultant's knowledge.
4. That Consultant did not, in any way, collude, conspire or agree, directly or indirectly, with any person, firm, corporation or other Consultant in regard to the amount, terms, or conditions of this proposal.
5. That Consultant did not receive unauthorized information from: Any ESUHSD staff member or Consultant during the Proposal period except as provided for in the Request for Qualifications package, addenda thereto, or the pre-proposal conference, if applicable.
6. That by submission of this proposal, the Consultant acknowledges that ESUHSD has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Consultant and Consultant hereby grants ESUHSD permission to make said inquiries, and to provide any and all requested documentation in a timely manner.
7. That funding for any resulting contract is contingent on adequacy and availability.
8. To comply with ESUHSD's insurance provisions, to provide appropriate indemnification for ESUHSD and to hold ESUHSD harmless from Consultant's performance of the contract.
9. Receipt and acceptance of the following addenda is hereby acknowledged:

No. \_\_\_\_\_, Dated \_\_\_\_\_

No. \_\_\_\_\_, Dated \_\_\_\_\_

**Consultant's Signature**

**No Proposal shall be accepted which has not been signed in ink in the appropriate space below:**

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Corporate Seal If applicable
---------------------------------------



## CONFLICT OF INTEREST STATEMENT East Side Union High School District (Consultants)

**[This form must be filled out, signed, dated and submitted by all persons seeking to serve as a consultant to the District]**

Board Policy 3600 of the East Side Union High School District provides in part:

“Independent contractors applying for a consultant contract shall submit a written conflict of interest statement disclosing financial interests as determined necessary by the Superintendent or designee, depending on the range of duties to be performed by the consultant. The Superintendent or designee shall consider this statement when deciding whether to recommend the consultant's employment.”

The Superintendent has determined that all persons seeking to serve as a consultant to the District shall fill out truthfully, sign, date and submit this Conflict of Interest Statement prior to performing any consultant work or services for the District.

I, \_\_\_\_\_ [NAME OF CONSULTANT], hereby certify the following:

1. I am not an employee of the District.
2. Within the past year I have not been a member of the District Board of Trustees of the District.
3. Neither I nor any member of my immediate family (includes parent, spouse, domestic partner, or child) or member or resident of my household is a member of the District's Citizens Bond Oversight Committee for the District's Measure G or Measure E bond programs.
4. Within the past year I have not provided or made, and will not provide or make, any promise of any gift<sup>1</sup> of any kind (money, meals, goods, services, entertainment tickets, etc.), in-kind services, commission, or fully or partially expense-paid trips to any District Board Member or District employee whose responsibilities include the selection of District consultants or the evaluation, supervision or oversight of District consultants (a **“Responsible Employee”**), except:

\_\_\_\_\_  
\_\_\_\_\_

<sup>1</sup> “Gifts” do not include promotional or advertising items such as calendars, desk pads, notebooks and other office items valued less than \$25.00 and which are of the type usually offered by business concerns free of charge to all as part of their public relations programs.



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5. I do not employ or retain, and will not employ or retain, any current District **Responsible Employee** as a consultant, independent contractor or employee during the term of my consultancy agreement with the District.

6. I am authorized to make, and do make, this certification on behalf of \_\_\_\_\_  
[CONSULTANT].

The foregoing certifications are true and correct. I make this certification under penalty of perjury under the laws of the State of California.

Signature of Consultant

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Signature Date

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# EAST SIDE UNION HIGH SCHOOL DISTRICT

## CONTRACT SERVICES AGREEMENT IRS GUIDELINES

Please complete questionnaire below before completing Contract Services form.

Consultant Name \_\_\_\_\_

Brief Description of Services \_\_\_\_\_

PART I	YES	NO
1. Has this category of worker already been classified an "employee" by the IRS? Administrators                      tutors                      nurses teachers/instructors              cafeteria workers              psychologists substitutes                      counselors                      intern psychologists school bus drivers                      examination monitors              specialty teachers clerical staff                      proctors                      librarians athletic coaches                      individuals "filling in" on an interim basis		
2. Is this individual working as an employee prescribed by the Education Code?  Education Code Sections 45100-45451 define what constitutes the classified service. Education Code Sections 44800-45060 define the certificated service. The IRS predisposes an employer/employee relationship when state law mandates such a relationship.		
3. Is the individual already an employee of the district in another capacity?		
4. Has the individual performed substantially the same services for the district as an employee in the past?		
5. Are there currently employees of the district doing substantially the same services as will be required of this individual?		
6. Does the district have the legal right to control the method of performance by this individual? Consider whether the District will train the individual or give instruction as to when, where, how, and in what order the work will be performed.		
7. Does the District require the individual to submit reports on the details of their work or work at a particular site?  These factors indicate the District maintains control sufficient for an employer/employee relationship. However, it is not necessary that the District exercise this right, or have the expertise required to do so.		

If the answer to any of the above questions is "YES" --- **STOP HERE !!!**

Do not complete the rest of the questions. The individual is a district employee and must be paid and reported accordingly. Call Human Resources for further details.

If all of the above are "NO", continue...

PART II	YES	NO
8. Will all the work be performed by this individual? Consider whether or not the individual may designate someone else to do the work without the District's knowledge or approval.		
9. Does the district have a continuing relationship with this individual? Is this a "one shot" assignment, or will the District continue to use this individual in the future? This could be on an infrequent or irregular basis, but a continuous relationship exists.		
10. Can this relationship be terminated without the consent of both parties?		

If the answer to the question 8, 9, or 10 is "YES", there is a good possibility that an employment relationship exists. Questions 8 & 9 are indicators of district control that in conjunction with other factors imply an employment relationship.

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11. Does the individual operate an independent trade or business that is available to the general public? A determining factor in judging independence is the performance of services to the general public. In evaluating this criteria, the District is considered to be a separate entity. Keep in mind: if the District is using this individual's services on a full-time basis, the individual is <u>not</u> available to the general public.		
12. Does the individual have a substantial investment in his/her business, i.e. maintains a facility, equipment, etc.? This is indicative of economic risk inherent in business enterprises. An independent Consultant must be able to make a profit or sustain a loss.		

If either 11 or 12 are "**NO**", the individual is a district employee **STOP HERE** and process the individual through Human Resources and payroll.

If 11 and 12 are both "**YES**", continue...

13. Does the individual provide all materials and support services necessary for the performance of this service? The District should not be providing office space on a regular basis, clerical, secretarial, or other support for the individual such as materials, copying, printing, office supplies, etc. Any necessary assistance should be provided by the individual.		
14. Is this individual paid by the job or upon completion and acceptance of the work as a whole or milestones identified in the contract?		
15. Does the individual bear the cost of any travel and business expenses incurred to perform this service? Generally the individual will pay the cost of any travel and business expenses incurred to perform the work. However, some agreements may be made to provide for payment of airfare, mileage, etc. for consultants.		

If 11 and 12 are "**YES**", 13 through 15 should also be "**YES**" and are items that should be written into the Independent Contract.

This individual is an Independent Consultant. A "**YES**" on questions 13 through 15 supports the district's conclusion and substantiates a "reasonable basis" for treatment as independent Consultant. While there is circumstances where the district may pay contractually provided expenses, these should be kept at a minimum to avoid giving the impression of an employment relationship.

**By signing below, Consultant and Purchasing Manager attest that they have reviewed District guidelines and certify that the information above is true and correct.**

Consultant Signature \_\_\_\_\_ Date \_\_\_\_\_

Purchasing Manager Signature \_\_\_\_\_ Date \_\_\_\_\_

Please attach questionnaire to completed Contract Services Agreement form and send to the Business Office.

## EAST SIDE UNION HIGH SCHOOL DISTRICT

### CONTRACT SERVICES AGREEMENT (No. \_\_\_\_\_)

TO: BUSINESS SERVICES

FROM: Facilities/Capitol Projects \_\_\_\_\_ Linda da Silver/Janice Unger \_\_\_\_\_ Ext.# \_\_\_\_\_  
SCHOOL/DEPT. CONTACT PERSON

1. **PARTIES:** The East Side Union High School District (ESUHSD), whose address is 830 N. Capitol Avenue, San Jose, CA 95133, and the following named Consultant:

Consultant Name (First, Middle Initial, Last) \_\_\_\_\_

Address \_\_\_\_\_ CITY \_\_\_\_\_ ST \_\_\_\_\_ Zip \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax No. \_\_\_\_\_

Social Security Number \_\_\_\_\_ or Federal I.D. Number \_\_\_\_\_

Consultant's License # \_\_\_\_\_ Type \_\_\_\_\_ Expiration \_\_\_\_\_

mutually agree and promise as follows and as per terms and conditions set forth on the reverse side of this page (page 2):

2. **CONTRACT TERM:** Effective dates: \_\_\_\_\_ to \_\_\_\_\_.

3. **CONSULTANT'S OBLIGATION:** In consideration of the compensation, the Consultant shall provide the following services, materials, products, and/or reports. **Attach proposals and other documentation** if available.

**The scope of services, hereinafter referred to as Services, covered by this Contract Service Agreement (CSA), which is incorporated and made part of this agreement by this reference and the accompanying vendor's, estimated breakdown of cost per proposal submitted on (date) \_\_\_\_\_ for the (school and project name) \_\_\_\_\_ Project # \_\_\_\_\_.**

The scope of work includes \_\_\_\_\_ and/or \_\_\_\_\_. ESUHSD does not pay for mileage. Services not to exceed without District approval = \$ \_\_\_\_\_.

#### Invoices are to be submitted to East Side Union High School District in the following manner:

1. Invoices shall be in sufficient details to fully understand the services provided during the time period specified on the invoice, ie: dates, times, location, tasks, staff/sub consultant who provided the service, and any other information that is pertinent to the services provided.
2. Purchase order number, project name and number, DSA file number, along with application number assigned to this project needs to be listed on each invoice.
3. Invoices are to be sent to either the Capital Accounting Office at East Side Union High School District, 830 North Capitol Ave, San Jose, CA 95133 or emailed to [capacctg@esuhsd.org](mailto:capacctg@esuhsd.org)

(If applicable)

ESUHSD has retained the services of \_\_\_\_\_ as the Architect of the Construction Work.

ESUHSD has retained the services of \_\_\_\_\_ as the Construction Manager of the Construction Work.

ESUHSD has retained the services of \_\_\_\_\_ as the DSA Inspector of Record of the Construction Work.

Remit Address: \_\_\_\_ (Consultant's name and address) \_\_\_\_\_



4. **COMPENSATION:** In consideration of Consultant's provision of services as described above, ESUHSD shall pay Consultant upon completion of services, as follows:

Hourly Rate \$\_\_\_\_\_/hour    Total hours \_\_\_\_\_    **Total Fees \$**\_\_\_\_\_

Other (i.e. monthly, quarterly, annually): \_\_\_\_\_

5. **BUDGET CODE AND FUNDING SOURCE:**

**FUNDING SOURCE:** \_\_\_\_\_

FD XX	LOC XXX	PROG XXX	GOAL XXXX	FUNC XXXX	OBJT XXXX	RESC XXXX	YR X	MGR XXX	\$ AMOUNT

6. **APPROVALS:** These signatures attest the parties' agreement hereto:  
**East Side Union High School District:**

School Site/Dept. Administrator \_\_\_\_\_ Date \_\_\_\_\_

Business Services \_\_\_\_\_ Date \_\_\_\_\_

Associate Superintendent \_\_\_\_\_ Date \_\_\_\_\_

Board of Trustees \_\_\_\_\_ Date \_\_\_\_\_

**Consultant:**

Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name \_\_\_\_\_ Title \_\_\_\_\_

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**CONTRACT TERMS AND CONDITIONS**

1. **COMPENSATION:** In consideration of Consultant's provision of services as described, and subject to the payment provisions expressed herein, ESUHSD shall pay Consultant as agreed, upon Consultant's submission of a properly documented demand for payment which shall be

submitted not later than 30 days from the end of the month in which the contract services were rendered, and upon approval of such demand by ESUHSD.

2. **TERMINATION:** This contract may be terminated by ESUHSD at its sole discretion, upon five-day (5) advance written notice thereof to the Consultant, or cancelled immediately by written mutual consent.
3. **INDEPENDENT CONSULTANT STATUS:** This contract is by and between two independent Consultants and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association. In executing this agreement, the Consultant certifies that no one who has or who will have any financial interest under this agreement is an officer or employee of ESUHSD. Additionally, as the Consultant is not an ESUHSD employee, ESUHSD is not responsible for obtaining workers' compensation insurance coverage for the Consultant.
4. **COMPLETENESS OF AGREEMENT:** This agreement constitutes the entire understanding of the parties and any change or modification shall be in writing and signed by both parties hereto.
5. **INDEMNIFICATION:** The Consultant agrees and shall defend, indemnify, save, and hold harmless ESUHSD, its agents, officers and employees from any and all claims, costs and liability for any damages, from any cause whatsoever arising directly or indirectly from or connected with the operations or services of the Consultant, its agents, servants, employees or subConsultants hereunder, and any other person, firm or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this agreement and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Consultant in the performance of this agreement. Consultant will reimburse the ESUHSD for any expenditures, including reasonable attorney's fees, ESUHSD may make by the reason of the matters that are the subject of this indemnification, and if requested by ESUHSD, will defend any claims or litigation to which this indemnification provision applies at the sole cost and expense of the Consultant.
6. **INSURANCE:** The Consultant will maintain general liability insurance, including automobile coverage, in an amount as may be reasonably necessary to assure compliance with the indemnification provision, herein above. Additional insurance may be required by ESUHSD. The Consultant agrees to produce copies of the required policies of insurance upon request of ESUHSD. The requirements of this provision may be waived by ESUHSD; however, any waiver shall not affect the Consultant's liability to ESUHSD under the indemnification provision.
7. **NON-DISCRIMINATION/AFFIRMATIVE ACTION:** No discrimination shall be made in the employment of persons under this agreement because of the race, color, national origin, age, ancestry, physical handicap, religion, or sex of such person or any other basis protected by law.
8. **LICENSE AND AUTHORITY:** The Consultant warrants that he/she/it will maintain all necessary licenses, registrations, and certifications during the term of this agreement, and that, if other than a natural person, it is duly authorized to enter into this agreement by its governing or controlling body. Consultant shall provide evidence or copies of all necessary licenses, registrations and certifications upon ESUHSD's request.
9. **EQUIPMENT AND FACILITIES:** The Consultant will provide all necessary equipment and facilities to render his/her/its services pursuant to this agreement, unless the parties to this agreement specifically agree in writing that said equipment and facilities will be provided in a different manner.
10. **EXPENSES:** The Consultant shall be responsible for all costs and expenses incident to the performance of services for ESUHSD, including but not limited to: all costs of equipment provided by the Consultant, all fees, fines, licenses, bonds, or taxes required of or imposed against the Consultant, and all other of the Consultant's costs of doing business. ESUHSD shall not be responsible for any expenses incurred by the Consultant in performing services for ESUHSD except as provided by the agreement.
11. **TAX REPORTING/PAYMENT RESPONSIBILITIES:** ESUHSD shall provide an annual statement of compensation paid on the appropriate federal and/or state information forms. The Consultant is responsible for payment of any federal and/or state tax amounts due.
12. **ASSIGNMENT:** Without the written consent of ESUHSD, this agreement is not assignable by the Consultant, either in whole or in part.
13. **GOVERNING LAW AND LABOR CODE:** The validity of this agreement and any of its terms or provisions as well as the rights and duties of the parties hereunder shall be governed by the laws of the State of California. The Consultant shall be subject to and shall comply with all Federal, State, and Local laws and regulations applicable with respect to its performance under this contract, including but not limited to, licensing, employment and purchasing practices, and wages, hours and conditions of employment, including non-discrimination. Consultant shall comply with the applicable provisions of the Labor Code, Section 1720-1861, State of California, especially in regards to prevailing wages, copies of which are available at the District Office.
14. **AMBIGUITY:** The parties to this agreement, and each of them, hereby represent that the language contained herein is to be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all parties shall be treated as equally responsible for such ambiguity.
15. **FINGERPRINTING AND CRIMINAL RECORDS CHECK:** Consultant shall comply with the provisions of Education Code Section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. Consultant shall not permit any employees to have any contact with District pupils until such time as Consultant has verified in writing to the governing board of the East Side Union High School District that such employee has not been convicted of a felony as defined in Education Code Section 45125.1. Consultant's responsibility shall extend to all employees, subConsultants, and employees of subConsultants regardless of whether such individuals are paid or unpaid, concurrently employed by the District, and/or acting as independent Consultants of the Consultant. Verification of compliance with this section shall be provided in writing to the District prior to each individual's commencement of employment or participation in the project and prior to permitting contact with pupils. If the Consultant believes that Education Code section 45125.1 does not require fingerprinting, Consultant shall take the appropriate steps to provide for the safety of any pupils that may come into contact with its employees.