

Attachment A

Administrative and Legal Requirements

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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

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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 but 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.

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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.

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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.