

**AGREEMENT FOR
MATERIAL TESTING LABORATORY SERVICES
BY AND BETWEEN
ROWLAND UNIFIED SCHOOL DISTRICT
AND
_____ FIRM NAME
NOGALES HIGH SCHOOL PORTABLE LOCKER & RESTROOM INTERIM HOUSING
"RFQ/P 2023-24 (Q5)"**

This Independent Consultant Agreement for Professional Services is made as of _____, 2023, by and between **Rowland Unified School District** ("District") and _____ ("Consultant") (individually a "Party" or collectively the "Parties"). This Project is for material testing laboratory services related to the Nogales High School Portable Locker & Restroom Interim Housing Project: RFQ/P 2023-24 (Q5), as further described in the Project Scope attached hereto as **Attachment 1** ("Project").

RECITALS

WHEREAS, the District is authorized by California Government Code section 4525, et seq., to contract with and employ qualified firms, partnerships, corporations, associations, persons, or professional organizations for environmental consulting services through a fair, competitive selection process, which the District utilized when it was applicable; and

WHEREAS, the District is also authorized by California Government Code section 53060 to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if those persons are specially trained and experienced and competent to perform the special services required; and

WHEREAS, Consultant is specially trained, experienced, competent and duly licensed under the laws of the State of California to perform the services pursuant to this Agreement.

AGREEMENT

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

1. Services.

1.1. The Consultant shall provide the Services as indicated in the Agreement and in **Attachment 1** ("Services" or "Work") for the following sites: Nogales High School ("**Site(s)**").

1.2. Consultant may perform Services at multiple sites for the Project ("**Site(s)**"). The Consultant's Services at any one of the Sites or combination thereof may be changed, including terminated, in the same manner as the Project, as indicated herein, without changing in any way the remaining Consultant's Services at other Site(s). The provisions of this Agreement shall apply to the Consultant's Services at each Site, without regard to the status of the remaining Project component(s). Consultant shall invoice for each inspection and test separately and for each Site separately and District shall compensate Consultant for each Site separately on a proportionate basis based on the level and scope of Services completed for each Site.

2. Term. Unless terminated or otherwise cancelled as permitted herein, the term of this Agreement shall be for the following:

From _____, 20__, to _____, 20__ ("**Term**").

3. **Submittal of Documents.** The Consultant shall not commence the Work under this Agreement until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below and set forth in the Agreement:

- Signed Agreement
 - Workers' Compensation Certification
 - Fingerprinting/Criminal Background Investigation Certification
 - Insurance Certificates and Endorsements
 - W-9 Form
-

4. **Compensation.** Consultant’s fee for the performance of Consultant’s Services shall be on a **per site basis**. District agrees to pay the Consultant for Services satisfactorily rendered pursuant to this Agreement a total fee not to exceed _____ Dollars (\$ _____) (“**Total Fee**”). District shall not be obligated to pay or be liable in law or in equity for any amount incurred by Consultant above the Total Fee. District shall pay Consultant according to the provisions in the Agreement.

4.1. The Consultant shall submit a monthly itemized statement of Service charges and expenses to the District for the preceding month. If Consultant performs Services for more than one Site, Consultant shall prepare a separate, itemized statement for each Site. The itemized statement shall reflect the hours spent by the Consultant in performing its Services on each task, and, if applicable, the statements shall reflect expenses and materials. The invoices shall contain a sufficiently detailed description of any task performed by Consultant. The itemized statement shall show the days and hours worked each workday Consultant performs Services for the previous month. District will permit a two (2) month grace period beyond this time for the Consultant to submit its invoice for a particular month’s work (i.e., a total of three (3) months for Consultant to submit an invoice for a particular month’s work). No amounts shall be due or owing to the Consultant if it fails to submit an invoice to the District at or before the end of that grace period.

4.2. Consultant must provide, to the District’s satisfaction, appropriate substantiation for all Services performed on an hourly basis. Consultant shall properly support payment of all hourly services, as further described herein, for each invoice or application for payment submitted by Consultant for its Services. Failure to satisfy this requirement may result in Consultant’s invoice or application for payment being rejected, at the District’s discretion, until District approves Consultant’s full compliance herewith.

4.3. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Consultant submits an itemized statement to the District for Work actually completed and after the District’s written approval of the Work, or the portion of the Work for which payment is to be made.

4.4. **Hourly Rates.** The following rates, which include overhead, administrative cost and profit, shall be utilized in arriving at the fee for Services and Extra Services on a per hour basis and shall not be changed for the Term of the Agreement.

Job Title	Hourly Rate
[Insert Job Title]	\$
[Insert Job Title]	\$
[Insert Job Title]	\$

4.5. **Extra Services.** District-authorized services outside of the scope in **Attachment No. 1** or District-authorized reimbursables not included in the Consultant’s Total Fee are “Extra Services.” If the Consultant determines that Extra Services are necessary, then the Consultant may request from the District in writing the District’s authorization to perform Extra Services. Any charges for Extra Services shall be paid by the District only upon certification that the claimed Extra Services were authorized, in writing, by the District and that the Extra

Services have been satisfactorily completed. If any Services or Work are performed by the Consultant without prior written authorization by the District, the District will not be obligated to pay. Extra Services shall be requested, substantiated and paid as described herein.

4.5.1. **Billing for Extra Services.** Consultant shall bill the District for Extra Services as follows:

4.5.1.1. Extra Services shall be billed for on an hourly basis and per-item basis.

4.5.1.2. The District shall pay Consultant only for all undisputed amounts within thirty (30) days after Consultant submits an invoice to the District for Extra Services actually completed and after the District's written approval of the Extra Services, or the portion of the Extra Services for which payment is to be made.

4.5.1.3. Consultant must provide, to the District's satisfaction, appropriate substantiation for all Extra Services performed on an hourly basis. Consultant shall properly support payment of all hourly services in each invoice, as specifically provided for herein.

5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing the Services.
6. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the Services.
7. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees. In the performance of the work herein contemplated, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of Consultant's Work, District being interested only in the results obtained.
8. **Consultant and Subconsultant Registration and Compliance (When Applicable).** Consultant acknowledges that, for purposes of Labor Code section 1725.5, for all scopes of work that are within a classification of the Department of Industrial Relations (DIR) and for which there is a prevailing wage, then Labor Code section 1771 applies and that the Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. If that is the case, then:
 - 8.1. Consultant shall comply with Labor Code section 1725.5, including without limitation the registration requirements for itself and its subconsultants. Consultant represents that all of its subconsultants are registered pursuant to Labor Code section 1725.5.
 - 8.2. Consultant shall pay workers not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the DIR, for the type of work performed and the locality in which the work is to be performed within the boundaries of the District, pursuant to sections 1770 et seq. of the California Labor Code. Prevailing wage rates are available from the District or on the Internet at: <<http://www.dir.ca.gov>>.
 - 8.3. Labor Code section 1771.1(a) states the following:

“A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section

1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

- 8.4. Consultant shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations.
 - 8.5. Consultant shall post job site notices, as required by law, including without limitation Labor Code section 1771.4.
 - 8.6. Consultant shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.
9. **Designated Representatives.** Consultant shall coordinate with District personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work related to the Project.
10. **Performance of Services.**
- 10.1. **Standard of Care.**
 - 10.1.1. Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts. Consultant's Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.
 - 10.1.2. Consultant hereby represents that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of the Agreement.
 - 10.1.3. Consultant shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Consultant understands that the District relies upon the professional quality, accuracy, completeness, and coordination by Consultant in performing the Services.
 - 10.1.4. Consultant shall ensure that any individual performing work under the Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the work assigned to them.
 - 10.2. **Meetings.** In addition to all public hearings and meetings, Consultant agrees to participate in coordination meetings to discuss District strategies, timetables, implementations of Services, and any other issues deemed relevant to the Project.
 - 10.3. **District Approval.**
 - 10.3.1. The District has the right to inspect and supervise to secure satisfactory completion of the Services.
 - 10.3.2. Prior to any documents being made public, Consultant shall provide in draft form to District staff and District legal counsel, all documents that it or its subconsultants prepare.

10.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.

11. **Information.**

11.1. **Furnished by District.** Upon request by Consultant, District shall furnish Consultant any information and documents readily available to District that the Consultant determines may be of use to the Consultant in the performance of the Services. District shall rely upon Consultant to determine which information and documents may be of use to the Consultant in performance of the Services. District makes no representations with respect to the reliability, accuracy, or completeness of any information or documents furnished by the District. Consultant shall determine if it is appropriate to rely on the District furnished information or documents. Consultant shall determine if clarification, additional information, or additional data is needed, and if so, to seek it out.

11.2. **Furnished by Others.** Consultant is to obtain, utilizing its own personnel, any required information that has been developed by other public or private entities that are not under contract to District. Consultant shall determine if it is appropriate to rely on the information or data developed by these other public or private entities. Consultant shall determine if clarification, additional information, or additional data is needed.

12. **Originality of Services.** Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for the services.

13. **Copyright/Trademark/Patent.** Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

14. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents. For a period of three (3) years after final payment under this Agreement, all expenditures of public funds in excess of ten thousand dollars (\$10,000) shall be subject to examination and audit by the State Auditor. The audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering the Agreement.

15. **Termination.**

15.1. **Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for the Services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of Services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three (3) days after the day the notice was mailed, whichever is sooner.

15.2. **Without Cause by Consultant.** Consultant cannot terminate this Agreement without cause.

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

15.3.1. Material violation of this Agreement by the Consultant; or

15.3.2. Any act by Consultant exposing the District to liability to others for personal injury or property damage; or

15.3.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

Written notice by District shall contain the reasons for the intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the Services from another Consultant. If the expense, fees, and/or costs to the District exceeds the cost of providing the Services pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

15.4. **With Cause by Consultant.** Consultant may only terminate this Agreement after giving written notice of intention to terminate for cause and the expiration of the time to cure. Cause shall only include:

15.4.1. Material violation of this Agreement by the District, or

15.4.2. Failure of the District to timely pay undisputed Consultant invoices.

Written notice by Consultant shall contain the reasons for the intention to terminate and unless within thirty (30) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the thirty (30) calendar days cease and terminate. During the thirty (30) calendar days the Inspector shall continue providing Services to the District until the Agreement ceases and terminates. In the event of this termination, the District may secure the Services from another Consultant.

15.5. **Documentation upon Termination.** Upon termination, Consultant shall provide the District with all documents produced maintained or collected by Consultant pursuant to this Agreement, whether or not these documents are final or draft documents.

16. **Indemnification.** To the furthest extent permitted by California law, Consultant shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("**Claim(s)**"), but only to the extent that the Claim(s) arise out of, pertain to or relate to, in whole or in part, the negligence, recklessness, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, and/or this Agreement, including without limitation the payment of all consequential damages.

17. **Insurance.**

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

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

and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

17.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

17.1.3. **Professional Liability (Errors and Omissions).** This insurance shall cover the Consultant and his/her Consultant(s) for two million dollars (\$2,000,000) aggregate limit subject to no more than twenty-five thousand dollars (\$25,000) per claim deductible, coverage to continue through completion of construction plus two years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.

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

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

17.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

17.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

17.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers ("Additional Insureds") are named Additional Insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District.

17.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

17.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

18. **Assignment.** The obligations and liabilities of the Consultant pursuant to this Agreement shall not be assigned voluntarily by the Consultant nor assigned by operation of law, without express written consent of the District.
19. **Binding Contract.** This Agreement shall be binding upon the Parties hereto and upon their successors and assigns and shall inure to the benefit of the Parties and their successors and assigns.
20. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Consultant observes that any of the Work required by this Agreement is at variance with any of these laws, ordinances, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.
21. **Certificates/Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force the certificates, permits and licenses as are required by law in connection with the furnishing of the Services. Except for any license or permits furnished by District, Consultant shall be fully responsible for identifying and obtaining all necessary licenses and permits for the timely prosecution of the Services.
22. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and District policy. Consultant and each subconsultant shall comply with Chapter 1 of Division 2, Part 7 of the Labor Code, beginning with § 1720, and including §§ 1735, 1777.5 and 1777.6, forbidding discrimination, and §§ 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Consultant or subconsultants. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).
23. **Disabled Veteran Business Enterprises.** Pursuant to section 17076.11 of the Education Code, the District has a participation goal for disabled veteran business enterprises (DVBEs) of at least three percent (3%), per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the Act). This Project may use funds allocated under the Act. Therefore, to the extent feasible and pertaining to future hirings, the Consultant, before it executes the Agreement, shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBEs in conjunction with the Agreement, and documentation demonstrating the Consultant's good faith efforts to meet these DVBE goals.
24. **Interaction with the Media and Public.** Consultant shall promptly refer all inquiries from the news media or public to District and shall not make any statements to the media or the public relating to the Services. If Consultant receives a complaint from a citizen or the community, Consultant shall promptly inform the District about the complaint.
25. **Taxes.** Consultant shall be liable and solely responsible for paying all required taxes and other obligations, including but not limited to federal and state income taxes and social security taxes payable in connection with the Services and this Agreement. Consultant agrees to release, indemnify, defend, and hold District harmless from and against any worker's compensation or any tax liability which District may incur to any Federal or State governments with jurisdiction as a consequence of this Agreement. All payments made to Consultant may be reported to the Internal

Revenue Service.

- 26. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
- 27. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
 - 27.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
 - 27.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
- 28. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
- 29. **Disputes.** In the event of a dispute between the Parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Consultant shall neither rescind the Agreement nor stop performing the Services.
- 30. **Confidentiality.** The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
- 31. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which Services are actually being performed pursuant to this Agreement.
- 32. **Notice.** Notices and communications between the Parties may be sent to the following addresses:

District:

Rowland Unified School District
Building Services Department
1830 Nogales Street,
Rowland Heights, CA 91748
Attn: Marcos Rodriguez, Director of Construction
Email: marcosr@rowlandschools.org

Consultant:

_____ [Firm Name]
Company Address _____
_____, CA _____
Attn: _____
Email: _____

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the day after delivery.

- 33. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- 34. **California Law.** This Agreement is entered into in California and shall be governed by and the rights, duties and obligations of the Parties, and shall be determined and enforced in accordance with the laws of the State of

California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located. Consultant waives any claim or right to remove an action on this Agreement to federal court.

35. **Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of the term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
36. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
37. **Authority to Bind Parties.** Neither Party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
38. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
39. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted the provision, and this Agreement shall be construed as if jointly prepared by the Parties.
40. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
41. **Signature Authority.** Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.
42. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
43. **Incorporation of Recitals and Exhibits.** The Recitals and any and all exhibits/attachments attached hereto are hereby incorporated herein by reference.
44. **Provisions Required by Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein.
45. **Incorporation of RFQ/P and Interpretation of Documents.** The District's Request for Statement of Qualifications and Proposals ("RFQ/P") is hereby incorporated into this Agreement. If a conflict exists between this Agreement and the RFQ/P and/or the Consultant's Response to the RFQ/P, this Agreement shall control over the RFQ/P, which shall control over Consultant's Response.
46. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant performing any portion of the Services for the Project.
47. **Infectious Disease.** Consultant shall comply with all provisions related to Infectious Disease(s) as set forth in **Attachment 2** to this Agreement.

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

Rowland Unified School District

[Consultant] _____

Signature: _____

Signature: _____

Print Name: Alejandro Flores

Print Name: _____

Print Title: Deputy Superintendent

Print Title: _____

Dated: _____

Dated: _____

Email: rmcleod@rowlandschools.org

Email: _____

Information regarding Consultant:

Consultant: _____
License No.: _____
Address: _____
Telephone: _____
Facsimile: _____
E-Mail: _____

Employer Identification and/or Social Security Number

Type of Business Entity:
 Individual
 Sole Proprietorship
 Partnership
 Limited Partnership
 Corporation, State: _____
 Limited Liability Company
 Other: _____

NOTE: Title 26, United States Code sections 6041 and IRS reporting rules require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. These rules also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these rules, the District requires your federal tax identification number or Social Security number, whichever is applicable.

ATTACHMENT NO. 1

PROJECT SCOPE

SPECIAL TESTING AND INSPECTION

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

Link to 103, Approval Plans/Letter, DSA Approved Plans and DSA Submitted Plans:

<https://LMCCI.syncedtool.com/shares/folder/DPZoQiwVqHE/> or www.rowlandschools.org

The scope of Services is more specifically described herein.

The Consultant must complete a Division of the State Architect ("DSA") Form SSS 103-1 (Revised 4/07 or more recent version, Structural Tests and Inspections). All appropriate boxes must be checked to indicate the type(s) of Inspection(s) and/or testing that will be performed as part of the scope of this Agreement for the following sites: **Nogales High School**

- 1) Compacted fill inspection and testing
- 2) Reinforcing steel inspection and testing
- 3) Structural steel inspection and testing
- 4) Brick and block inspection and testing
- 5) Glued laminated structural lumbar inspection and testing
- 6) _____ inspection and testing
- 7) _____ inspection and testing
- 8) _____ inspection and testing

Consultant shall provide the Services set forth herein, as well as any incidental services necessary for the full and adequate completion of Project Services in strict accordance with all applicable local, state and federal laws rules and regulations, including but not limited to, the State Building Code, California Code of Regulations, Title 24 and Instructions on Division of the State Architect ("DSA"), Structural Tests and Inspections form SSS 103-1 (as provided for the project), and instructions included herein. Special Inspectors and testing staff shall be prepared to attend Project progress meetings and other specially called meetings as determined by the District. Consultant shall provide daily and/or individual occurrence reports of Special Inspections and Testing results on previously approved forms and provide sufficient copies to the District and District's Representatives for distribution to the Construction Contractor, and Architect.

Geotechnical Engineer of Record and Soils Observation and Testing

The geotechnical portions of this Project shall be performed under the direction of a Geotechnical Engineer, which shall be the Geotechnical Engineer of Record for the Project. A technician with a nuclear gauge shall perform density and moisture testing in the field during grading, utility trench backfilling, and pavement operations utilizing ASTM D2922, D3017, and ASTM D1556 methods. Laboratory maximum density and optimum moisture determination shall be performed in accordance with ASTM D1557 or D698. Asphalt pavement placement and testing shall be performed in accordance with Caltrans methods.

Consultant shall provide:

1. Perform a site reconnaissance, reviewing the geotechnical engineering report for this project, reviewing the drawings, and preparing a transfer of geotechnical engineer of record responsibility letter
2. Project management, consultation during construction, preparation of daily field, foundation excavation observation, and final grading reports
3. Ensure soils conditions are in conformance to soils report
4. Foundation Inspection
5. Caisson, drilled piers or driven piles inspection
6. As-graded soils report
7. Observation and testing during site clearing and mass grading
8. Observing the foundations excavations for structures

9. Observation and testing during backfilling of utility trenches
10. Observation and testing during backfilling around retaining walls
11. Observation and testing during subgrade preparation and base rock placement in asphalt paved areas
12. Observation and testing during asphalt concrete placement
13. Perform the following Sampling and Testing of Materials and Testing of Work-in-Place as may be required by the DSA Testing and Inspection Listing, and as required by the District. The Testing shall be performed in accordance with ASTM test methods and California test methods as appropriate. All Laboratory testing shall be accomplished in a DSA certified laboratory:
 - a. Soil, Aggregate & Asphalt
 - b. Maximum Dry Density
 - c. Expansion Index (ASTM D4318)
 - d. R-Value
 - e. Sand Equivalent
 - f. Sieve Analysis (ASTM C136)
 - g. Hveem Stability
 - h. Asphalt Extraction (ASTM 2172)
 - i. Hardness and Abrasion
 - j. Atterberg limits (ASTM 4318)
 - k. No. 200 Sieve Analysis (ASTM D422)
 - l. Specific Gravity C127/C128
 - m. Asphalt and Asphaltic Concrete Gradation (ASTM C136)
 - n. Asphalt and Asphaltic Concrete Specific Gravity (ASTM D1188)
 - o. Asphalt and Asphaltic Concrete Stability & Flow Marshall (ASTM D1559)
 - p. Asphalt and Asphaltic Concrete Abrasion (ASTM C131)
 - q. Asphalt and Asphaltic Concrete Unit Weight (ASTM D2726)
 - r. Asphalt Cores

Observation and testing shall consist of visual observation of earthwork activities and taking field density and moisture tests for the purpose of ascertaining that the work is in substantial conformance with the Project documents, plans and specifications.

ATTACHMENT NO. 2

INFECTIOUS DISEASE PROVISIONS

1. **Compliance with Orders.** Inspector and its subconsultants, agents and employees thereof are responsible for complying with all applicable and existing District, federal, State, and/or local statutes, orders, rules, regulations, ordinances, and/or directives in any way relating to construction site safety, the Services, the Project, and the Project sites, in connection with any infectious and communicable disease in any form, whether bacterial or viral, including, without limitation, MSRA, influenza, COVID-19, and/or any similar virus or derivative strain (“**Infectious Disease**”). Inspector shall ensure it has supervisor employees onsite that are trained and knowledgeable of all these requirements to ensure full compliance on the Project sites and the Services. Inspector’s obligations hereunder shall include, without limitation providing personal protective equipment (“**PPE**”) to its employees and to ensure that its subconsultants provide PPE equipment to its employees to prevent the spread of an Infectious Disease at the Project site(s).

2. **Infectious Disease Release.** Inspector acknowledges that it is voluntarily and freely entering into the Agreement for this Project and deciding to perform the Services which will require Inspector to enter upon and into the Project site(s) and that Inspector use of the Project site(s) includes the possible exposure to and illness from an Infectious Disease. Inspector further acknowledges the dangers involved and with full knowledge of these dangers, voluntarily agrees to assume all risks of bodily injury, death, or property damage, whether those risks are known or unknown. Inspector hereby releases District, its agents, representatives, officers, consultants, employees, trustees, and volunteers from any and all liabilities, causes of action, lawsuits, claims, demands, or damages of any kind whatsoever that Inspector, its staff, participants, relatives, children, spouse, partner, household members, family members, employees, guests, invitees, volunteers, agents, consultants, subconsultants, and any other person tracing exposure or illness to Inspector, now have, or may have in the future, for injury, trauma, illness, loss, unwanted contact, harassment, disability, death or property damages related to being exposed to or contracting an Infectious Disease while using the Project site(s) for the performance of the Services. Inspector shall include this paragraph in all subcontracts with subconsultants.

3. Any cost to comply with these “Infectious Disease Compliance Provisions” shall be at Inspector’s sole expense, but may be included in the Fee.

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Independent Consultant Agreement for Professional Services (Construction Related) ("Agreement"):

[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.] Consultant's employees will not interact with District pupils outside of the immediate supervision and control of the pupil's parent or guardian or a school employee while providing services pursuant to the Agreement and therefore the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 do not apply. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District.

Date: _____
District Representative's Name and Title: _____
Signature: _____

The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Consultant's services under this Agreement and Consultant certifies its compliance with these provisions as follows: *"Consultant certifies that the Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Consultant's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant, interact with District pupils, outside of the immediate supervision and control of the pupil's parent or guardian or a school employee, in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto."*

Consultant's services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:

- _____ The installation of a physical barrier at the worksite to limit contact with pupils.
- _____ Continual supervision and monitoring of all Consultant's on-site employees of Consultant by an employee of Consultant, _____, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.
- _____ Surveillance of Employees by District personnel. **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]**
Date: _____
District Representative's Name and Title: _____
Signature: _____

Megan's Law (Sex Offenders). I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

[MUST BE COMPLETED BY CONSULTANT'S AUTHORIZED REPRESENTATIVE.] I am a representative of the Consultant entering into this Agreement with the District and I am familiar with the facts herein certified and am authorized and qualified to execute this certificate on behalf of Consultant.

Date: _____
Name of Consultant or Company: _____
Signature: _____
Print Name and Title: _____

IRAN CONTRACTING ACT CERTIFICATION
(Public Contract Code § 2204)

PROJECT/CONTRACT NO.: _____ between **Rowland Unified School District** (“District” or “Owner”) and _____ (“Consultant”) (“Contract” or “Project”).

Pursuant to Public Contract Code (PCC) section 2204, an Iran Contracting Act certification is required for solicitations of goods or services of one million dollars (\$1,000,000) or more.

Consultant shall complete **ONLY ONE** of the following three paragraphs.

- 1. Consultant’s total Fee is less than one million dollars (\$1,000,000).
OR
- 2. Consultant’s total Fee is one million dollars (\$1,000,000) or more, but Consultant is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services (“DGS”) pursuant to Public Contract Code § 2203(b), and Consultant is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.
OR
- 3. Consultant’s total Fee is one million dollars (\$1,000,000) or more, but the District has given prior written permission to Consultant to submit a proposal pursuant to PCC 2203(c) or (d). **A copy of the written permission from the District is included with this Agreement.**

I certify that I am duly authorized to legally bind the Consultant to this certification, that the contents of this certification are true, and that this certification is made under the laws of the State of California.

Date: _____

Proper Name of Consultant: _____

Signature: _____

Print Name: _____

Title: _____

RUSSIAN SANCTIONS CERTIFICATION

PROJECT/CONTRACT NO.: _____ between **Rowland Unified School District** (“District” or “Owner”) and _____ (“Consultant” or “Firm”) (“Contract” or “Project”).

On February 21, 2022, President Biden issued Executive Order 14065 (<https://www.whitehouse.gov/briefing-room/presidential-actions/2022/02/21/executive-order-on-blocking-property-of-certain-persons-and-prohibiting-certain-transactions-with-respect-to-continued-russian-efforts-to-undermine-the-sovereignty-and-territorial-integrity-of-ukraine/>; “**Federal Order**”) imposing economic sanctions and prohibiting many activities including, but not limited to, investing in, importing to, exporting from, and contracting with, areas of Ukraine and in Russia. On March 4, 2022, California Governor Newsom issued Executive Order N-6-22 requiring state agencies to take steps to ensure any agency and entity under contract with state agencies comply with the Federal Order (<https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf>; “**State Order**”).

The District requires the Consultant, as a vendor with the District, to comply with the economic sanctions imposed in response to Russia’s actions in Ukraine, including the orders and sanctions identified on the U.S. Department of the Treasury website (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>).

If your Firm’s contract with the District has a cumulative value of \$5 million or more, you must also provide a written response to the District, in addition to this certification, indicating:

- (1) that your Firm is in compliance with the required economic sanctions of the Federal and State Orders;
- (2) the steps your Firm has taken in response to Russia's actions in Ukraine, including, but not limited to, desisting from making new investments in, or engaging in financial transactions with, Russian entities, not transferring technology to Russia or Russian entities, and directly providing support to the government and people of Ukraine.

I certify that I am duly authorized to legally bind the Consultant to this certification, and I certify that the Consultant is compliant with the Federal Order and the State Order.

Date: _____

Proper Name of Consultant: _____

Signature: _____

Print Name: _____

Title: _____

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

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

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

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with these provisions before commencing the performance of the Work of this Agreement.

Date: _____

Name of Consultant or Company: _____

Signature: _____

Print Name and Title: _____

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Work under this Agreement.)