

**REQUEST FOR QUALIFICATIONS AND
PROPOSALS**

FOR

DSA INSPECTION SERVICES

Proposal Due Date

May 24, 2021 at 4:00 PM

Submit to:

Jefferson Elementary School District

**1219 Whispering Wind Dr.
Tracy, CA 95377**

REQUEST FOR QUALIFICATIONS AND PROPOSAL FOR DSA INSPECTORS

The Jefferson Union Elementary School District is inviting proposals from qualified individuals, firms, partnerships, corporations, associations, or professional organizations to provide comprehensive professional DSA inspection services associated with the construction of **Corral Hollow Elementary School**.

If you would like to submit a Statement of Qualifications and Proposal (collectively a "Proposal") to this REQUEST FOR QUALIFICATIONS AND PROPOSAL FOR DSA INSPECTORS (collectively the "RFP"), please send one (1) original and two (2) copies of requested materials to:

**Jefferson Elementary School District
Attention: Dena Whittington
1219 Whispering Wind Dr.
Tracy, CA 95377**

Questions regarding this RFP may be directed to Dena Whittington, (dwhittington@jsdtracy.com)

PROPOSED SCHEDULE OF EVENTS

EVENT	DATE
Distribution/Advertisement of RFP	May 12, 2021
Proposal Due Date	May 24, 2021
Review by Technical Committee	May 28, 2021
Interviews	June 2, 2021
Board Meeting	To Be Determined
<i>Note:</i> All dates are preliminary and subject to revision by the District.	

I. INTRODUCTION

The intent of this RFP is to obtain information that will enable the Jefferson Union Elementary School District (“District”) to select an Inspector or Inspectors who will provide the DSA Project Inspection Services that the District will require in connection with the construction, modernization and/or school expansion of *Corral Hollow Elementary School*.

In connection with the above projects, the District is soliciting written Proposals from individuals and firms desiring to provide DSA Inspection Services at various school sites as requested by the District. Interested individuals or firms are requested to submit written Statements of Qualifications and their proposed pricing structure to the District in response to this RFP. All services requested will be under the supervision of the District Superintendent.

Included in this package is a proposed Master Inspector Services Agreement. Should you be selected to perform any inspection services for the District, you will be required to execute the attached Master Inspector Services Agreement.

II. SCOPE OF WORK

The purpose of this RFP is to provide the District with a source to provide all required DSA Inspection Services at various District school project sites. Inspectors may be required to provide services to multiple sites.

Principal items of work shall include, but are not limited to, the following:

- a. Perform all functions and responsibilities of a Division of the State Architect (“DSA”) Inspector of Record;
- b. The responding individual or firm shall provide inspection services in strict accordance with applicable version Sections of Title 24 of California Code of Regulations and including, but not limited to, Sections 4-333 and 4-342; DSA IR A-8; Education Code section 17309 and 17311; and strictly adhering to current and developing DSA Guidelines, formatting and forms. The District will seek the highest qualified DSA Project Inspector;
- c. Respond promptly to requests by the District or its designated representative to provide input on estimates of completion for line items relative to Contractor pay invoices;
- d. Participate in pre-construction meetings and site visits; participate in regular job site construction progress meetings with the District, Project Architect, Construction Manager, Contractor, consultants, and key subcontractors;
- e. Monitor daily construction progress in relation to the Contractor’s adherence to schedules and assure that construction is performed properly, provide continual quality assurance according to District standards;

f. Provide personal and continuous inspection of the Work of construction in all stages of its progress in order to verify that the requirements of the DSA approved plans and specifications are being completely and properly executed;

g. Review and monitor the Contractor's construction methods and procedures during all construction activities, including earthwork, concrete placement, masonry erection, welding procedures, all finishes, electrical, mechanical, fire alarm, etc.;

h. Provide to the District a weekly report itemizing deficiencies in the Work, provide a synopsis of the Work schedule including itemizing changes in the Work

i. Conduct daily site inspections during construction and inform the Contractor, Project Architect and District of all non-conforming Work and the steps required to correct the same by the Contractor; and/or

j. Create and issue construction deficiency lists and participate in the development of the project punch list.

III. REQUIREMENTS FOR STATEMENT OF QUALIFICATIONS

In order to be considered for selection as the Project Inspector, the respondent entities and individuals shall submit the following items in the District's specified format.

1. Cover Letter (Exhibit "A")

The Proposal must contain a cover letter and introduction, as Exhibit A, including the Responding Firm or Inspector's name, address, and the name, telephone numbers, and e-mail address of the person or persons authorized to represent the firm regarding all matters related to the proposal and who will be available, knowledgeable, and regularly attentive to the District and who will be the primary point of contact. The proposal shall identify the Inspector(s) that will be assigned to the District's project along with their credentials and experience. The Responding Firm will not be allowed to change any designated Inspectors without prior written approval from the District. The Cover Letter shall include the following information:

a. Describe in detail Responding Firm or Inspector's understanding of the requested services and how the Responding Firm or Inspector proposes to service the District.

b. What differentiates the Responding Firm or Inspector from other providers?

c. The Responding Firm's or Inspector's letter must also contain the following statement:

"I/We have read the District's Request for Qualifications and Proposal (RFP) for DSA Inspector and fully understand its intent. I/We certify that I/we have adequate personnel, equipment, and facilities to provide the District's requested services that I/we have

indicated I/we can provide. I/We understand that our ability to meet the criteria outlined in the RFP shall be judged solely by the District. In addition, I/we certify that I/we have thoroughly examined the RFP requirements and our proposed fees cover all the services that I/we have indicated I/we can meet, and I/we acknowledge and accept all terms and conditions in this RFP”.

A person authorized to bind the Responding Firm to all commitments made in the Proposal shall sign the letter, which should be no longer than three single-sided pages.

2. DSA Project Inspection Card Process (Exhibit “B”)

The Proposal shall contain a detailed explanation of how the Responding Firm or Inspector will implement and address the DSA Project Inspection Card Process and the DSA 152 Form. Such discussion shall include, without limitation, the following:

- a. Overall understanding of the Inspection Card Process and how the Responding Firm or Inspector intends to implement the new requirements.
- b. How the Responding Firm or Inspector intends to implement the construction oversight process procedures set forth in DSA PR-13-01.
- c. How the Responding Firm or Inspector intends to timely respond to inspection requests from contractors.
- d. What process and procedures the Responding Firm will have in place to minimize delays if one Section of the DSA 152 Form is not completed for inspection and will impact work on subsequent Sections of the DSA 152 Form.
- e. How the Responding Firm or Inspector will handle deviations by contractors to minimize delays.
- f. What action the Responding Firm or Inspector will take if a Stop Work Order is issued.
- g. How the Responding Firm or Inspector will coordinate its services with the contractors, architect, project/construction manager (if applicable), special inspectors, and testing laboratories.

3. Consultant Company History (Exhibit “C”)

Each Responding Firm or Inspector submitting a Proposal in response to this RFP shall detail the following information in Exhibit C:

- a. Number of Years in business;
- b. Number of Dedicated Inspectors with their DSA Classification Numbers for the company (company-wide); and

- c. Number of Dedicated Inspectors located in Los Angeles County (Local Hire).

4. Provide Resumes of Project Inspectors (Exhibit “D”)

a. Provide resumes (limited to 2 single sided pages), DSA Form 5 PI’s and 6 PI’s of comparable projects, and written evidence of DSA classification certification for each proposed DSA Inspector. These resumes must represent projects over the last five years. Please also indicate number of years with the firm either as a contractor or employee and which of the projects have been with the Responding Firm.

b. Please provide reference letters, as available, for each proposed Inspector. The reference letters shall be from the project architects and the school district representatives for the past projects listed by the Responding Firm or Inspector in the Proposal. These letters will not count as part of the two page resume submission, but should be attached to the relative resume.

5. Project Information & References (Responding Firm or Inspector) (Exhibit “E”)

Please provide information about the projects detailed in Exhibit D above, in the following format, for school districts where the Responding Firm or Inspector provided DSA Project Inspection Services within the past five years.

<u>Years</u>	<u>School District</u>	<u>District Contact, Title</u>	<u>Project Value</u>	<u>Inspector</u>
2013-14	XYZ District	Smith, James Dir. of Facilities	\$XX Million	Doe, John

6. Litigation History (Exhibit “F”)

Provide specific information on any termination for default, termination for convenience, claims filed by or against the Responding Firm or Inspector in connection with any public school district project, litigation settled or judgments entered within the last five years related to your firm, joint venture partners, or sub-consultants. Also, provide information relative to any convictions for filing false claims within the past five years.

7. Insurance Certification Requirements (Exhibit “G”)

The District requires the following insurance limits:

- a. General Liability – \$1,000,000
- b. Automobile Insurance-Policy limits \$1,000,000 with Insert the District as an additional insured
- c. Workers Compensation - California State Minimum Requirements
- d. Professional Liability - Policy Limits \$1,000,000.00 per incident, \$2,000,000 Aggregate

Please detail the insurance limits maintained by the Responding Firm or Inspector.

8. Exceptions to the Master Inspector Services Agreement (Exhibit “H”)

The form of the Master Inspector Services Agreement is attached to this RFP as Attachment “A.”. Please review each agreement and provide any proposed exceptions to those agreements.

9. Financial Strength (Exhibit “I”)

Provide the Responding Firm or Inspector’s most recent quarterly or annual Financial Statement.

In addition, include any other information and comments that you feel is pertinent but not specifically asked for herein. Provide a signature page executed by an authorized person of the firm or individual which states that the information provided will be valid for a period of at least six months.

IV. FEE SCHEDULE PROPOSAL

The District’s selection will be based on the Responding Firm or Inspector’s qualifications and competitiveness. To facilitate the District’s selection process, each Responding Firm or Inspector shall submit the proposed Fee Schedule that would be applicable to the District on the above-referenced projects. The Fee Schedule in both hourly and flat monthly rate basis must be provided for all proposed Project Inspectors fees, and must include a description and definition of the billing rates as it applies to all working times.

THE PRICING SCHEDULE MUST BE SUBMITTED IN A SEPARATE SEALED PACKET.

V. EVALUATION OF SUBMITTALS

The District will develop a short list of firms that are most qualified and responsive to this RFP and from that listing request firm service. The District will identify the most qualified firms or individuals based on the following criteria:

- a. Overall responsiveness of the RFP
- b. Evaluation of Approach to Performing Services – Including Oral Interview if requested by the District
- c. Past performance of the Inspector on relevant similar work for other school districts, and satisfaction regarding prior projects
- d. Litigation History
- e. Proposed Fees

Proposals should be complete and be prepared to provide an insightful, straightforward, and concise overview of the capabilities of your company. Any proposal received after the deadline of Proposal Due Date specified herein, will not be considered or reviewed.

The emphasis of your proposal should be on completeness and clarity of content. Proposals may be rejected if not prepared in the format described above, or if submitted without all required information and signatures. Additional facts and information may be included if it will help to highlight your firm's qualifications and experience. The District will not be responsible for any errors or omissions on the part of the Responding Firm or Inspector in the preparation of the submittal.

Upon submission to District, proposals and other documents responding to this Request for Proposals become the exclusive property of District, are deemed matters of public record and shall be thereupon considered public records, except for information contained in such proposals or other documents submitted with the proposals deemed to be "Trade Secrets" (as defined in California Civil Code §3426.1), "Confidential" or "Proprietary." A proposer who indiscriminately marks all or most of its proposal or other documents submitted with its proposal as exempt from disclosure as a public record, whether by the notations of "Trade Secret", "Confidential", "Proprietary" or otherwise, may render the proposal non-responsive and it may be rejected. At such time as proposals and other documents are deemed matters of public record, pursuant to the above, any party shall be afforded access thereto for inspection and/or copying, by request made to District in conformity with the California Public Records Act, California Government Code §§6250, *et. seq.*

If District is required to defend or otherwise respond to any action or proceeding wherein request is made for the disclosure of the contents of any portion of a proposal or documents submitted with a proposal deemed exempt from disclosure hereunder, the proposer submitting the materials sought by such action or proceeding agrees to defend, indemnify and hold harmless the District and its Board of Education, employees, officers and agents, in any action or proceeding from and against any liability, including without limitation attorneys' fees and costs arising therefrom. The party submitting materials sought by any other party shall be solely responsible for the cost and defense in any action or proceeding seeking to compel disclosure of such materials. The District's sole involvement in any such action shall be that of a stakeholder, retaining the requested records/documents/materials until otherwise ordered by a court of competent jurisdiction to disclose or to keep such records/documents/materials confidential. Failure of any proposer to indemnify and defend the District upon request shall be deemed the proposer's consent to the disclosure of the requested records/documents/materials and the District shall thereafter immediately release and disclose the requested records/documents/materials to the requesting party.

Each Firm or individual is requested to submit one original and two copies of the Proposal to the District on or before the Proposal Due Date. Each packet must be clearly identified by firm name, and clearly identified as a Proposal in response to the District's "**REQUEST FOR QUALIFICATIONS AND PROPOSALS FOR DSA INSPECTORS.**" Direct Proposals to: Jefferson Union Elementary School District, Attention: Address, city, state, zip.

The RFP submittal shall be submitted on 8 ½” x 11” papers, single sided, with a font no less than 11 pitch. Maximum pages allowed will be thirty (30) excluding the Fee Schedule. Submittals are to be submitted in sealed packages.

An individual or individuals authorized to execute legal documents on behalf of the consultant shall sign the Proposal on the last page of the document. Failure to provide the information requested in this RFP, or the inclusion of any conditional limitations, or misrepresentations, may adversely affect the evaluation of your submittal, or be cause for consideration as non-responsive to the RFP.

Once the District receives the responses to the RFP, the submittals will remain valid and may not be withdrawn for a period of ninety (90) days.

VI. QUESTIONS/CLARIFICATIONS

Questions or clarifications during the RFP preparation period should be directed to dwhittington@jsdtracy.com

VII. FINGERPRINTING REQUIREMENT

The Responding Firm or Inspector shall obtain a criminal history clearance in conformance with California Education Code Section 45122.1 through the California Department of Justice fingerprint program. The firm shall not permit any employee or any subcontractor’s employee to perform services at a school campus until the California Department of Justice has determined that the employee has not been convicted nor has criminal charges pending of a felony offence as defined in the Education Code section 45122.1

VIII. HOURS OF WORK

The work at school sites shall be coordinated with the District. The District shall establish actual start dates and completion dates. The District must authorize any “premium” (overtime) work. Evening and week end work may be necessary.

IX. INSURANCE REQUIREMENT

Requirements outlined in the Inspector Services Agreement and as set forth in this package.

X. DISTRICT RIGHT TO REJECT

The District reserves the right to accept or reject any and all submittals, or any portion or combination thereof, to contract with whomever and in whatever manner the District decides, to abandon the RFP entirely, to make a selection on the basis of the total submittal, and to waive any informality or non-substantive irregularity, as the interests of the District may require.

The Responding Firm or Inspector’s information package, and any other supporting materials submitted to the District in response to this Request for Proposals will not be returned and will become the property of the District. This document does not commit the District to select any Responding Firm or Inspector.

The District shall not be liable for any costs incurred in preparing and submitting responses to this RFP and makes no representation that a firm or inspector will be selected. Furthermore, District reserves the right to add additional firms for consideration after receipt of this RFP if it is found to be in the best interest of the District.

XI. ATTACHMENTS TO THIS PROPOSAL

Attachment as identified is incorporated herein by this reference as if fully set forth herein. If any conflict arises between the services identified, the District shall, at its sole discretion determine which services shall be performed.

Attachment A – Master Inspector Services Agreement



ATTACHMENT "A"

MASTER INSPECTOR SERVICES AGREEMENT

(ATTACHED)

CONSULTANT SERVICES AGREEMENT

(SPECIAL INSPECTION AND/OR TESTING SERVICES)

This AGREEMENT is made and entered into this _____ day of _____ in the year 2021 (“EFFECTIVE DATE”), by and between _____, hereinafter referred to as the “OWNER”, and _____ hereinafter referred to as the “CONSULTANT”. The OWNER and the CONSULTANT are sometimes referred to herein singularly as a “PARTY” and collectively as the “PARTIES”. This AGREEMENT is made with reference to the following facts:

WHEREAS, the OWNER requires specialized inspection and/or testing and related services and CONSULTANT is specially experienced and competent to provide to the OWNER such specialized services and/or advice in one or more of the foregoing areas;

WHEREAS, OWNER desires to obtain specialized inspection and related services and/or advice for the _____ Project located at _____, hereinafter referred to as the “PROJECT”;
and

WHEREAS, CONSULTANT has indicated its willingness and commitment to provide its specialized testing and inspection services to the OWNER on the terms hereinafter set forth in this AGREEMENT.

NOW, THEREFORE, the PARTIES hereto agree as follows:

ARTICLE I

SCOPE AND SERVICES TO BE PROVIDED BY CONSULTANT

1. Services to be Provided by the CONSULTANT. The CONSULTANT shall perform its services hereunder in a professional manner, using the degree of care and skill ordinarily exercised by, and consistent with, the current professional practices and standards of a professional (providing services like the CONSULTANT) practicing in California. The CONSULTANT shall provide to the OWNER on the terms set forth herein all the services articulated in this AGREEMENT and as set forth in the CONSULTANT’s PROPOSAL which shall be attached hereto and incorporated herein as EXHIBIT “A” (the “PROPOSAL”). In the event of a discrepancy, inconsistency, conflict or other difference between the terms of the CONSULTANT’s PROPOSAL with this AGREEMENT, the PARTIES agree that the terms of this AGREEMENT shall govern and be controlling.

2. CONSULTANT’s Certifications, Representations and Warranties. CONSULTANT makes the following certifications, representations, and warranties for the benefit of the OWNER and CONSULTANT acknowledges and agrees that the OWNER, in deciding to engage CONSULTANT pursuant to this AGREEMENT, is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this AGREEMENT and the course of CONSULTANT’s engagement hereunder:

a. CONSULTANT is qualified in all respects to provide to the OWNER all of the services contemplated by this AGREEMENT and, to the extent required by any applicable laws, CONSULTANT has all such licenses and/or governmental approvals as would be required to carry out and perform, for the benefit of the OWNER, such services as are called for hereunder.

b. CONSULTANT, in providing the services and in otherwise carrying out its obligations to the OWNER under this AGREEMENT, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including worker's compensation and equal protection and non-discrimination laws.

c. If applicable, CONSULTANT shall be properly registered with the Department of Industrial Relations and qualified to perform public works in accordance with Labor Code sections 1725.5 and 1771.1 at all times during the term of this AGREEMENT.

ARTICLE II

CONSULTANT'S SERVICES AND RESPONSIBILITIES

1. The CONSULTANT shall perform all special inspections and testing services in conformance with the PROJECT's approved Construction Documents, applicable codes and code references.

2. The CONSULTANT shall meet with the Construction Manager, the Architect/Engineer, Structural Engineer and the OWNER as needed throughout the completion of the PROJECT to verify, acknowledge and coordinate the special inspection and testing program required by the approved Construction Documents for the PROJECT and this AGREEMENT.

3. The CONSULTANT shall keep the Construction Manager, the Architect/Engineer, the Structural Engineer and the OWNER informed of all special inspections, testing and/or PROJECT related activities being performed by the CONSULTANT in order to ensure that all testing and special inspections required for the completion of the PROJECT are performed timely and satisfactorily. The CONSULTANT shall keep the Construction Manager, Architect/Engineer, Structural Engineer and the OWNER thoroughly informed as to the progress of the work by submitting detailed daily reports, in writing, to the Construction Manager which outline the work inspected and/or tested. The CONSULTANT shall submit the detailed daily reports to the Construction Manager on the same day the inspections, testing and/or PROJECT related activities are performed and shall provide the Architect/Engineer, Structural Engineer and the OWNER with a copy of such reports. The CONSULTANT shall also submit daily special inspection reports in a timely manner to the Construction Manager so as not to delay the PROJECT. However, in no event shall the CONSULTANT submit a special inspection report to the Construction Manager later than fourteen (14) days from the date the special inspections are performed. The CONSULTANT shall provide a copy of each daily special inspection report to the Architect/Engineer, Structural Engineer and the OWNER on the day the original report is submitted to the Construction Manager.

4. In the event the CONSULTANT identifies construction and/or material deviations from the approved Construction Documents in connection with the work being completed on the PROJECT, the CONSULTANT shall immediately issue a written report of such deviations to the Construction Manager and OWNER.

5. If applicable, the CONSULTANT and any subcontractors (of any tier) performing work pursuant to this AGREEMENT must comply with the Labor Code sections 1725.5 and 1771.1 and must be properly and currently registered with DIR and qualified to perform public works pursuant to Labor Code section 1725.5 throughout the duration of this AGREEMENT. CONSULTANT shall be solely responsible for ensuring compliance with Labor Code section 1725.5 as well as any requirements implemented by DIR applicable to its services or its subcontractors throughout the term of this AGREEMENT and in no event shall CONSULTANT be granted increased payment from the OWNER a result of CONSULTANT's efforts to maintain compliance with the Labor Code or any requirements implemented by the DIR. Failure to comply with these requirements shall be deemed a material breach of this AGREEMENT and grounds for termination for cause. If applicable, the CONSULTANT and all subcontractors shall furnish certified payroll records as required pursuant Labor Code section 1776 directly to the Labor Commissioner in accordance with Labor Code section 1771.4 on at least on a monthly basis (or more frequently if required by the OWNER or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE).

ARTICLE III **TERMINATION**

1. This AGREEMENT may be terminated by either PARTY upon fourteen (14) days written notice to the other PARTY in the event of a substantial failure of performance by such other PARTY, including insolvency of CONSULTANT; or if the OWNER should decide to abandon or indefinitely postpone the PROJECT.

2. In the event of a termination based upon abandonment or postponement by OWNER, the OWNER shall pay to the CONSULTANT for all services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement plus any sums due the CONSULTANT for Board approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this AGREEMENT, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings, reports and/or other documents whether delivered to the OWNER or in the possession of the CONSULTANT. In the event termination is for a substantial failure of performance, all damages and costs associated with the termination, including increased consultant and replacement consultant costs shall be deducted from payments to the CONSULTANT.

3. In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience in accordance

with Article III, Section 4 below, and CONSULTANT shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by CONSULTANT.

4. This AGREEMENT may be terminated without cause by OWNER upon fourteen (14) days written notice to the CONSULTANT. In the event of a termination without cause, the OWNER shall pay to the CONSULTANT for all services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination plus any sums due the CONSULTANT for Board approved extra services.

5. In the event of a dispute between the PARTIES as to performance of the work or the interpretation of this AGREEMENT, or payment or nonpayment for work performed or not performed, the PARTIES shall attempt to resolve the dispute. Pending resolution of this dispute, CONSULTANT agrees to continue the work diligently to completion. If the dispute is not resolved, CONSULTANT agrees it will neither rescind the AGREEMENT nor stop the progress of the work, but CONSULTANT's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the PROJECT has been completed, and not before. The PARTIES may agree in writing to submit any dispute between the PARTIES to arbitration.

6. The PARTIES understand and agree that Article III of this AGREEMENT shall govern all termination rights and procedures between the PARTIES. Any termination provision that is attached to this AGREEMENT as an Exhibit shall be void and unenforceable between the PARTIES.

ARTICLE IV **REPORTS AND/OR OTHER DOCUMENTS**

The reports and/or other documents (regardless of format or medium) that are prepared, reproduced, maintained and/or managed by the CONSULTANT or CONSULTANT's consultants in accordance with this AGREEMENT, shall be and remain the property of the OWNER (hereinafter "PROPERTY"). The OWNER may provide the CONSULTANT with a written request for the return of its PROPERTY at any time. Upon CONSULTANT's receipt of the OWNER's written request, CONSULTANT shall return the requested PROPERTY to the OWNER. CONSULTANT may retain a confidential file copy of the PROPERTY with all originals being returned to the OWNER. Failure to provide the PROPERTY to the OWNER within ten (10) calendar days after the CONSULTANT's receipt of the OWNER's written request shall be deemed a material breach of this AGREEMENT.

ARTICLE V **ACCOUNTING RECORDS OF THE CONSULTANT**

Records of the CONSULTANT's direct personnel and expenses pertaining to any extra services provided by the CONSULTANT, which are in addition to those services already required by this AGREEMENT, and any records of accounts between the OWNER and CONSULTANT shall be kept on a generally recognized accounting basis and shall be available to the OWNER or OWNER's authorized representative at mutually convenient times.

ARTICLE VI
COMPENSATION TO THE CONSULTANT

1. The OWNER shall compensate the CONSULTANT as follows:

a. The OWNER agrees to pay the CONSULTANT in accordance with the fee, rate and/or price schedule information set forth in EXHIBIT "A", inclusive of reimbursable expenses, for performing the basic services required by this AGREEMENT subject to the limitations set forth herein this Article VI, Section 1(a). In no event shall the CONSULTANT's compensation exceed Thirty-One Thousand Dollars (\$31,000.00) for performing all the basic services detailed in Article II and EXHIBIT "A" without prior written approval by the OWNER. CONSULTANT shall invoice costs monthly for the services provided pursuant to this AGREEMENT from the time the CONSULTANT begins work on the PROJECT. All costs must be supported by an invoice, receipt, or other acceptable documentation.

b. Invoices requesting payment for Additional Services performed in accordance with Article VII below must reflect the compensation approved by the OWNER and include a copy of the OWNER's written authorization. The OWNER's prior written authorization is an express condition precedent to any payment by the OWNER for Additional Services and no claim by the CONSULTANT for additional compensation related to Additional Services shall be valid absent such prior written approval by the OWNER to proceed with such Additional Services as required by Article VII.

ARTICLE VII
ADDITIONAL CONSULTANT SERVICES

1. CONSULTANT shall notify the OWNER in writing of the need for additional services required due to circumstances beyond the CONSULTANT's control. CONSULTANT shall obtain written authorization from the OWNER before rendering any additional services. The OWNER may also require CONSULTANT to perform additional services which are, in the OWNER's discretion, necessary. Compensation for all additional services shall be negotiated and approved in writing by the OWNER before CONSULTANT performs such additional services. CONSULTANT shall not be entitled to any compensation for performing additional services that are not previously approved by the OWNER in writing. Additional services shall include:

a. Making material revisions in reports or other documents when such revisions are required by the enactment or revision of laws, rules or regulations subsequent to the preparation and completion of such documents.

b. Preparing reports and other documentation and supporting data, and providing other services in connection with project modifications required by causes beyond the control of the CONSULTANT which are not the result of the direct or indirect negligence, errors or omissions on the part of CONSULTANT.

c. If the OWNER requests additional shifts to complete the services articulated in Article II and EXHIBIT "A" where the requests for additional shifts does not arise from the direct or indirect negligence, errors or omissions on the part of CONSULTANT. The CONSULTANT's compensation is expressly conditioned on the lack of fault of the CONSULTANT.

d. Providing any other services not otherwise included in this AGREEMENT or not customarily furnished in accordance with the generally accepted practice in the CONSULTANT's industry.

ARTICLE VIII **MISCELLANEOUS**

1. To the fullest extent permitted by law, CONSULTANT agrees to indemnify, and hold OWNER entirely harmless from all liability arising out of:

a. Workers Compensation and Employers Liability: Any and all claims under Workers' Compensation acts and other employee benefit acts with respect to CONSULTANT's employees or CONSULTANT's subcontractor's employees arising out of CONSULTANT's work under this AGREEMENT, except for liability resulting from the sole or active negligence, or willful misconduct of the OWNER, its officers, employees, agents or independent consultants who are directly employed by the OWNER; and

b. General Liability: Liability for damages for (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of law or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by the OWNER, or any person, firm or corporation employed by the CONSULTANT or the OWNER upon or in connection with this AGREEMENT or the PROJECT, except for liability resulting from the sole negligence or willful misconduct of the OWNER, its officers, employees, agents or independent consultants who are directly employed by the OWNER. The CONSULTANT, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the OWNER, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the OWNER, its officers, agents or employees in any action, suit or other proceedings as a result thereof; and

c. Professional Liability: Any loss, injury to or death of persons or damage to property caused by any act, neglect, default or omission of the CONSULTANT, or any person, firm or corporation employed by the CONSULTANT, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation including the OWNER, arising out of, or in any way connected with the Construction Management Services, including injury or damage either on or off OWNER property; but not for any loss, injury, death or damages caused by sole negligence or willful misconduct of the OWNER.

d. The PARTIES understand and agree that Article VIII, Section 1 of this AGREEMENT shall be the sole indemnity, as defined by California Civil Code § 2772, governing this AGREEMENT. Any other indemnity that may be attached to this AGREEMENT as an Exhibit shall be void and unenforceable between the PARTIES.

e. Any attempt to limit the CONSULTANT's liability to the OWNER in an attached exhibit shall be void and unenforceable between the OWNER and the CONSULTANT. In no event shall the CONSULTANT's liability be limited to the amount of the CONSULTANT's fees for the PROJECT or any other amount.

2. CONSULTANT shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to OWNER which will protect CONSULTANT and OWNER from claims which may arise out of or result from CONSULTANT's actions or inactions relating to the AGREEMENT, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

a. The CONSULTANT shall carry Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California. However, such amount shall not be less than One Million Dollars (\$1,000,000).

b. Commercial general liability insurance with limits of not less than One Million Dollars (\$1,000,000) and automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage liability, per occurrence, including coverage for the following:

1. Owned, non-owned and hired vehicles;
2. Blanket contractual;
3. Broad form property damage;
4. Products/completed operations; and
5. Personal injury.

c. Professional liability insurance, including contractual liability, with limits of \$1,000,000, per claim. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least five (5) years thereafter and/or at rates

consistent with the time of execution of this AGREEMENT adjusted for inflation. In the event that CONSULTANT subcontracts any portion of CONSULTANT's duties, CONSULTANT shall require any such subcontractor to purchase and maintain insurance coverage as provided in this subparagraph. Failure to maintain professional liability insurance is a material breach of this AGREEMENT and grounds for immediate termination.

d. Valuable Document Insurance. The CONSULTANT shall carry adequate insurance on all drawings, specifications and reports as may be required to protect the OWNER in the amount of its full equity in those drawings, specifications and reports, and shall file with the OWNER a certificate of that insurance. The cost of that insurance shall be paid by the CONSULTANT, and the OWNER shall be named as a loss payee.

e. Each policy of insurance required in Article VIII, Section 2(b) above shall name OWNER and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of CONSULTANT hereunder, such policy is primary and any insurance carried by OWNER is excess and non-contributory with such primary insurance; shall state that not less than thirty (30) days' written notice shall be given to OWNER prior to cancellation; and, shall waive all rights of subrogation. CONSULTANT shall notify OWNER in the event of material change in, or failure to renew, each policy. Prior to commencing work, CONSULTANT shall deliver to OWNER certificates of insurance as evidence of compliance with the requirements herein. In the event CONSULTANT fails to secure or maintain any policy of insurance required hereby, OWNER may, at its sole discretion, secure such policy of insurance in the name of and for the account of CONSULTANT, and in such event CONSULTANT shall reimburse OWNER upon demand for the cost thereof.

f. In the event that CONSULTANT subcontracts any portion of CONSULTANT's duties, CONSULTANT shall require any such subcontractor to purchase and maintain insurance coverage for the types of insurance referenced in Article VIII, Sections 2(a), (b), (c), and (d), in amounts which are appropriate with respect to that subcontractor's part of work which shall in no event be less than \$500,000 per occurrence.

3. CONSULTANT, in the performance of this AGREEMENT, shall be and act as an independent contractor. CONSULTANT understands and agrees that CONSULTANT and all of CONSULTANT's employees shall not be considered officers, employees or agents of the OWNER, and are not entitled to benefits of any kind or nature normally provided employees of the OWNER and/or to which OWNER's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONSULTANT assumes the full responsibility for the acts and/or omissions of CONSULTANT's employees or agents as they relate to the services to be provided under this AGREEMENT. CONSULTANT shall assume full responsibility for payment of any applicable prevailing wages and all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective CONSULTANT's employees. CONSULTANT shall fully defend and indemnify the OWNER from any claims, damages or any liability arising from or related to

CONSULTANT or its subcontractors' failure to comply with any applicable prevailing wage laws and requirements.

4. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of any third party against either the OWNER or CONSULTANT.

5. The OWNER and CONSULTANT, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other PARTY to this AGREEMENT with respect to the terms of this AGREEMENT. CONSULTANT shall not assign this AGREEMENT.

6. This AGREEMENT shall be governed by the laws of the State of California.

7. This AGREEMENT shall not include or incorporate the terms of any general conditions, conditions, master agreement or any other boilerplate terms or form documents prepared by the CONSULTANT. The attachment of any such document to this AGREEMENT as Exhibit "A" shall not be interpreted or construed to incorporate such terms into this AGREEMENT unless the OWNER approves of such incorporation in a separate writing signed by the OWNER. Any reference to such boilerplate terms and conditions in the proposal or quote submitted by the CONSULTANT shall be null and void and have no effect upon this AGREEMENT. Proposals, quotes, statement of qualifications and other similar documents prepared by the CONSULTANT may be incorporated into this AGREEMENT as Exhibit "A" but such incorporation shall be strictly limited to those parts describing the CONSULTANT's scope of work, rate and price schedule and qualifications.

8. Each of the PARTIES have had the opportunity to, and have to the extent each deemed appropriate, obtained legal counsel concerning the content and meaning of this AGREEMENT. Each of the PARTIES agrees and represents that no promise, inducement or agreement not herein expressed has been made to effectuate this AGREEMENT. This AGREEMENT represents the entire AGREEMENT between the OWNER and CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be amended or modified only by an agreement in writing signed by both the OWNER and the CONSULTANT.

9. Time is of the essence with respect to all provisions of this AGREEMENT.

10. This AGREEMENT shall be construed as if all PARTIES hereto, and each of them, prepared it and any uncertainty or ambiguity shall not be interpreted to favor one PARTY over any other PARTY.

11. If either PARTY becomes involved in litigation arising out of this AGREEMENT or the performance thereof, each PARTY shall bear its own litigation costs and expenses, including reasonable attorney's fees.

12. All exhibits referenced herein and attached hereto shall be deemed incorporated into and made a part of this AGREEMENT by each reference as though fully set forth in each

instance in the text hereof with the exception of those documents or provisions that are subject to the exclusions specifically set forth in this AGREEMENT.

The PARTIES, through their authorized representatives, have executed this AGREEMENT as of the day and year first written above.

CONSULTANT:

OWNER:

Name

Jefferson Elementary School District

By: _____

By: _____

EXHIBIT “A”

(CONSULTANT’S PROPOSAL)