

SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT



REQUEST FOR PROPOSALS NO. 78 FOR ON-CALL STRUCTURAL AND MECHANICAL ENGINEERING SERVICES AT VARIOUS DISTRICT SITES

PROPOSAL DEADLINE DATE

June 9, 2010 at 4:00 p.m.

SUBMIT PROPOSALS TO

SAN BERNARDINO UNIFIED SCHOOL DISTRICT
Facilities Management/Maintenance & Operations Department
956 W. 9th Street
San Bernardino, California 92411
Phone: (909) 388-6100
Attention: **Peace Aneke**

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PURPOSE OF THE RFP:

NOTICE IS HEREBY GIVEN that the San Bernardino City Unified School District (SBCUSD) acting by and through its Governing Board, hereinafter referred to as the District, is soliciting and will receive up to, but no later than **June 9, 2010 by 4 p.m.**, proposals from interested individuals and firms who can provide on-call structural and/or mechanical engineering services ("Services") for various new construction and modernization projects. All qualified providers of services described in the Request for Proposal (RFP), including local individuals and firms are encouraged to submit proposals. Detailed scopes of services for Structural and Mechanical Engineering are attached herein as Exhibit A and incorporated thereof as though set forth in full.

Individuals and firms (Consultants) licensed to practice mechanical engineering or structural engineering in the State of California are eligible to submit responses to this RFP. Consultants licensed to practice both structural and mechanical engineering must submit a separate response to this RFP for each discipline. Proposals must be submitted in a sealed envelope, addressed as indicated on the front page, with the name and address of the consultant in the upper, left corner, under which should be clearly printed: PROPOSAL FOR ON-CALL **STRUCTURAL AND/OR MECHANICAL ENGINEERING SERVICES**

The District intends to establish a shortlist of Consultants through review and numerical ranking of the proposals received. Subsequent to establishing the shortlist, the District plans to enter into negotiations for the purpose of entering a master service agreement with one of more of the selected Consultants. Upon the execution of master service agreements with Consultants, as the District identifies the need for the Services, the District will request a proposal from the approved Consultants for one or more specific project(s). The execution of the master service agreement does not necessarily guarantee work for any Consultant. Upon selection of any Consultant to perform Services, the District will issue a work order called Assignment of Project (AOP) to the Consultant. The AOP will show a total not-to-exceed cost, specific details of the project and line items that specify the services to be provided by the Consultant. The District anticipates issuing numerous AOPs in order to meet the overall needs of the District.

The initial term of the contract shall be three (3) years from the Board of education award. Contracts may be extended for successive one-year terms, not to exceed an accumulative total of five years.

GENERAL BACKGROUND ON THE DISTRICT:

The San Bernardino City Unified School District is currently the seventh largest school district in California with approximately 66 schools in operation and a student enrollment of approximately 52,365 students. Currently the district has 44 elementary, 10 middle/prep high, 8 high schools, 3 specialty schools and 1 adult school.

For additional information on the District, please visit the San Bernardino City Unified School District Internet web site at www.sbcusd.k12.ca.us or by calling (909) 381-1100.

***PROPOSAL TIMELINE:**

Request for Proposals Issued	May 20, 2010
Deadline for Questions on Proposals..... ..	May 31, 2010
Due Date for Proposals.....	June 9, 2010
Anticipated Board Approval Date.....	July 27, 2010
Anticipated Notification to Successful Consultant.....	July 28, 2010

* Dates are subject to change.

QUESTIONS AND CLARIFICATION OF THE PROPOSAL

Questions in regards to this RFP shall be directed to Peace Aneke, Contract Analyst, Facilities Management/Maintenance and Operation Department at (909) 388-6100.

If a Consultant desires an explanation or clarification of any kind regarding this RFP, the Consultant must make a written request for such explanation. Requests should be addressed to Peace.Aneke@sbcusd.com by no later than 4:00 PM, May 31, 2010;

The District will advise all Consultants known to have received a copy of the RFP of responses to the requests received for explanation or clarification, either by emails or via facsimile and on the District website at www.sbcusdfacilities.com. All Consultants are advised to check the District websites for any updates.

CONTENTS OF THE PROPOSAL

Consultants must submit one (1) original and three copies of their proposals. All proposals should address the following items in the order listed below. The proposals are to demonstrate the qualifications, competence and capacity of the firm :

1. **Cover Letter/Letter of Interest** - Include a cover letter stating the eligibility of the firm to respond to this RFP, a brief description of the firm and statement of interest.
2. **Table of Contents** – The Table of Contents shall reflect the order stated herein and shall include section titles and page numbers.
3. **Consultant Firm Data “Attachment 2”** – Each Consultant must completely answer the questions in Attachment 2 of the RFP. Note: **Questions may be answered in other sections of the proposal if clearly and conspicuously identified on the questionnaire.** The following shall be stated:
 - a. **Description Of Consultant’s Company** – Include a description of qualifications for providing the requested services. Include information regarding the size of the company, location of the office from which the required services would be performed, nature of work performed, and years in this particular business. The Consultant shall provide an affirmative statement that it is independent of the District as defined by generally accepted standards.
 - b. **Consultants Personnel and Staffing Resources** – Submit resume(s) or profiles of the individual(s) who will be assigned to provide the requested services, including their qualifications and recent related experience providing similar services. Include an affirmative statement that the firm and all assigned key

professional staff are currently licensed to perform the services and hold all proper business or other required licenses. **This list shall include all subconsultant information who may participate in any project.** This would also include firms to accomplish underground utility location verification, and/or any destructive testing or investigation (including cutting and patching) that may be required.

- c. **Capacity & Methodology** – Describe how the firm will provide services and fulfill the requirements and expectations of the District and this RFP. Use this section to address the ability of your company to undertake and accomplish the required scope of services while meeting any deadlines. Include your estimated timeline schedule of services.
 - d. **Experience and References** – Description of past performances of similar service and related experience. The Consultant is required to submit a list of its most relevant services provided in the last five (5) years as structural and/or mechanical engineering firm that are of the approximate size of services described in the Statement of Work, Exhibit A, including any School Districts. The list shall include the size of the project, scope of the work, date services were performed, number of hours of service for the project, client company name, client contact name and phone number.
 - e. **Customer Service Commitment** – Describe your ongoing commitment to providing outstanding customer service.
 - f. **Additional Information - Consultants** are encouraged to provide additional information or description of resources the firm feels is pertinent to the RFP.
4. **Table of Hourly Rates and Reimbursable Expenses “Attachment 3”** – The Consultant shall state in a table in the format shown in Attachment 3 the fully burdened hourly rates of all proposed personnel, including names, and titles and a table of reimbursable expenses on a unit cost basis, if applicable.
- a. **Fee Schedule:** Include schedule for lump sum fees based on actual construction costs for projects whose construction cost shall not exceed \$300,000.00.
 - b. **Rate Schedule:** Include proposed hourly rates for all disciplines to be assigned to the project including rates for sub-consultants such as electrical engineers, cost estimators, fire protection engineers, etc.
 - c. **Reimbursable Expenses:** Travel to and from the District offices and project sites, shall be included in the hourly rates. Reproduction for District use shall be transmitted by Consultant to

District's reproduction vendor. Proposals must list basis for all other reimbursable costs including any markups.

5. **Equal Employment Opportunity Certification "Attachment 4"** – Consultant needs to certify that compliance with the federal requirements are met.
6. **Worker's Compensation Insurance Certification "Attachment 5"** - Complete and sign the Worker's Compensation Insurance Certification form. Other proof of Insurance for General Liability, Professional Liability, Public Liability and Auto Liability or a statement of liability shall be required from the successful Consultant according to the terms of this RFP.
7. **Local Business Outreach Program "Attachment 6"**– Consultants are requested to submit the District's Local Business Outreach Program (LBOP) registration form. The District is using this form to monitor the participation of local professional service providers in the Facilities Capital Improvement Program. Copies of the LBOP registration form is attached hereto as Attachment 6.

At a minimum, the following documents will be required of the successful Consultant(s):

- Master Service Agreement
- Proof of DOJ Fingerprinting clearance
- W-9 Form (IRS Form 1099)

PREPARATION AND SUBMITTAL OF THE PROPOSAL

Proposal Submittal and Deadline

One original and three copies (4 total) of the proposals must be submitted under sealed cover by no later than **4 p.m. on June 9, 2010**. Mark your company name, RFP title and RFP deadline on the outside of the sealed proposal envelope or box.

Proposals shall be delivered to the attention of:

Peace Aneke, Contract Analyst,
Facilities Management/Maintenance and Operations Department,
San Bernardino City Unified School District,
956 W. 9th Street,
San Bernardino, CA 92411

It is the sole responsibility of the consultant submitting the proposal to ensure that their proposal and any amendments are actually received in the office prior to the deadline time and due date. Unless this RFP is extended by a written amendment, proposals received after the time on the due date, will not be considered. Fax, email or telegraphic proposals will not be accepted.

Proposal Completeness

Proposals shall be completed in all respects as required by the instructions herein. A proposal may be rejected if it is conditional or incomplete, or if it contains alterations of form or other irregularities of any kind. A proposal will be rejected if, in the opinion of the District, the information contained therein was intended to mislead the District in the evaluation of the proposal.

SBCUSD Not Responsible For Preparation Costs

All costs incurred in the preparation, submission and/or presentation of Consultants responding to the RFP including, but not limited to, the Consultant's travel expenses to attend any pre-conferences, oral presentations, long distance charges, and negotiation sessions, shall be the sole responsibility of the Consultant and will not be reimbursed by SBCUSD.

SBCUSD shall not pay for any costs incurred for proposal or contract preparation as a result of termination of this proposal or termination of the contract resulting from this proposal.

Right To Use Ideas

All proposals and other materials submitted become the property of the SBCUSD. SBCUSD reserves the right to use any ideas presented in any response to the proposal. Selection or rejection of the proposal shall not affect this right.

Modification Or Withdrawal Of Proposal

A Consultant may modify or withdraw a proposal after submission by written request of withdrawal and re-submission, provided that the proposal withdrawal is prior to the due date deadline specified.

Amendments

Consultants are advised that the District reserves the right to amend this RFP at any time. Amendments will be done formally by providing written amendments to all potential Consultants known to have received a copy of the RFP and/or by publishing the amendment on the District website: www.sbcusdfacilities.com; .

Equal Opportunity

The Consultant shall certify that it is an Equal Opportunity Employer and has made a good faith effort to improve minority employment and agrees to meet federal and state guidelines.

No discrimination shall be made in the employment of persons t because of the sex, race, color, national origin or ancestry, religion, or handicap of such personnel.

Complete the Equal Opportunity Certification form, attached herein as Attachment No. 4, and return with the proposal.

Completion of Work and Liquidated Damages

Work shall be commenced on or after the date stated in the District's Notice to the Consultant to Proceed with each Assignment of Project (AOP) which may be through the Assignment of Project (AOP) form and shall be completed by the Consultant in the time frame specified in the form. If the work is not completed in accordance with the foregoing, it is understood that the District will suffer damages, and not as a penalty, the sum stipulated in the amount included in each executed AOP per calendar day that the work remains incomplete beyond the completion date will be deducted from the amount owed by the District to the Consultant.

Waiver or Breach of Contract

No term or provision of this contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by an individual authorized to so waive or consent. Any consent by either party to, or waiver of, a breach by the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for, any other breach or subsequent breach, except as may be expressly provided in the waiver or consent.

Covenant against Gratuities

The Consultant warrants by signing hereon that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Consultant or any agent or representative of the Consultant, to any officer or employee of the District with a view toward securing the contract or securing favorable treatment with respect to any determinations concerning the performance of the contract. For breach or violation of this warranty, the District shall have the right to terminate the contract, either in whole or in part, and any loss or damage sustained by the District in procuring on the open market any items which Consultant agreed to supply shall be borne and paid for by the Consultant. The

rights and remedies of the District provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

Waiver and Severability Clause

One or more waivers of any term, condition or covenant by either party shall not be construed as a waiver of any other term, condition or covenant. If any provision of this RFP or Agreement is held, in whole or in part, to be unenforceable for any reason, the remainder of that provision and of the entire RFP or Agreement shall be severable and remain in effect.

PROPOSAL EVALUATION, AWARD AND AGREEMENT

Proposal Evaluation:

A District Proposal Evaluation Committee will determine which, if any, proposal is in the District's overall best interest to accept. During the evaluation, the District may request proposal clarifications, explanations and answers from a Consultant. The District may request any or all Consultants to come on site and participate in a presentation and/or interview in regards to their proposal. Consultants must be able to come on site within two days of request, unless another date has been agreed upon.

The District reserves the right to conduct negotiations with any or all Consultants as determined by the DISTRICT to be in the best interest of the District.

Evaluation Criteria:

The evaluation of proposals will include but not be limited to the following criteria:

1. **Proposal Packet** – Completeness and clarity of proposal content.
2. **Consultant Qualifications** – Company size, years in business, licenses and certifications, etc.
3. **Consultant's Personnel and Staffing Resources** – Professional qualifications and specialized experience of the proposed staff including the quality of the firm's professional personnel to be assigned to District projects and the quality of the firm's management support personnel to be available for technical consultation and/or assistance;
4. **Capacity & Methodology – Current capacity** and likelihood of the Consultant to successfully meet the needs of the District and fulfill the requirements of each RFP and AOP issued within the timelines given.
5. **Experience & References** – Experience and expertise of the firm in providing similar services to other public entities of comparable size and scope, especially a school district.
6. **Customer Service** – Willingness and availability of the Consultant to assist the District in the assessment, evaluation, administration, procedures, presentations and reporting regarding any structural and/or mechanical engineering services requirements.
7. **Fee Schedule** – Rates for different disciplines and positions to be utilized in any assignment.

SBCUSD Obligation

Receipt of proposals and responses to this proposal does not obligate the District in any way. The District reserves the right to accept or reject any or all proposals, to waive any irregularities or informalities in any proposal or in the proposal process.

Award Of Proposal

This proposal implies no obligation to award contracts to any consultant. If it is in the best interest of the District, the District retains the sole and absolute right to select the firm that best meets the District requirements. The award is subject to acceptance by the Governing Board of the San Bernardino City Unified School District. The District reserves the right to reject all proposals.

Approval To Start Work

The successful Consultant may perform work on any task order ("AOP") until a Master Services Agreement has been fully executed and approved by both parties and all appropriate documentation has been received and approved by the District, and a purchase order has been issued. SBCUSD shall not be responsible for work done, even in good faith, prior to approval of the agreement and purchase order issuance by SBCUSD.

Ownership Of Documents

All proposals and materials submitted in response to this RFP shall become the property of the District and shall be considered a part of the Public Record. In addition, all designs, drawings, specifications, notes and other work developed in the performance of any contract resulting from this proposal are the sole property of SBCUSD and may be used by SBCUSD for any purpose without additional compensation to the successful Consultant. Successful Consultant agrees not to assert any rights or to establish any claim under the design patent or copyright laws.

Joint Ventures

Joint ventures WILL NOT be acceptable for the performance of any contract that may result from this proposal.

Assignment

This contract shall not be assignable in whole or in part without written consent of the SBCUSD. It is the policy of the SBCUSD to withhold consent from proposed assignments, or subcontracts when such transfer of responsibility would operate to decrease the SBCUSD's likelihood of receiving performance on the contract. The SBCUSD does not normally object to the granting of assignments for financial purposes, provided that the original Consultant retains all of its responsibilities and obligations under the contract. In the event of any assignment hereunder to which the SBCUSD has consented, each such assignment shall contain a provision that further assignments shall not be made to any third or subsequent party without any additional written consent of the SBCUSD.

Consultant's Power And Authority

The Consultant warrants that it has full power and authority to grant the rights

herein granted and will hold the SBCUSD hereunder harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Consultant declares that it will not enter into any arrangement with any third party, which might abridge any rights of the SBCUSD under this contract.

Disputes

If a dispute arises among the parties hereto, the parties agree first to try in good faith to settle the dispute among them via agreement and thereafter by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to litigation. All parties shall share the costs of any mediation proceedings equally.

EXHIBIT A

SCOPE OF SERVICES - MECHANICAL ENGINEERING SERVICES

This is an On-Call Master Services Agreement for Mechanical Engineering Services. The Consultant will prepare Mechanical Engineering design and bid documents and drawings and or Mechanical Engineering repair recommendations required by the District whether requiring DSA approval or not. Prepare any Mechanical Engineering specifications required by the District per all applicable codes and standards and DSA interpretation of codes and standards. Prepare all proposed design and repair work in accordance with applicable provisions of the District's Architect Design Manual. The specific services of the Consultant will vary from one "Assignment of Project" to another and will be specifically defined for each individual project. However, the tasks will include all services described hereunder:

- ∞ Prepare Mechanical Engineering drawings, specifications, mechanical analysis, calculations, investigations, arrange for and contract for destructive testing, prepare cost estimates, and all other items required to complete the assigned task including obtaining DSA approval where required, providing bid documents, reviewing bids, reviewing submittals and shop drawings, providing construction observation, construction administration and project closeout.
- ∞ Retain other sub-consultants to perform minor supporting services (firms or individuals subject to prior approval of the District) as necessary to provide complete design, including cost estimators, civil engineers, structural engineers, fire protection engineers, code consultants, acoustical consultants, electrical engineers and architects.
- ∞ Review and make any necessary corrections to DSA required drawings sufficient to obtain DSA approval.
- ∞ Prepare bid addenda and/or documents revisions during bidding, obtain DSA approval where required.
- ∞ Prepare IB and change order documents during construction, obtain necessary agency and DSA approval of change order documents.
- ∞ Prepare reports and make investigations, prepare designs and repairs for items of a mechanical nature for the District including but not limited to its Maintenance and Operations Department.
- ∞ Provide constructability review, biddable document review, quality assurance review of mechanical engineering work accomplished by other mechanical engineers.

Project Management:

- ∞ Assist the District in assembling project bids and bid documents for any mechanical upgrades.
- ∞ Assist District in bidding of project if necessary.

- ∞ Provide construction administrations and other services, including additional services as requested by the District as outlined in District Master Services Agreement for Mechanical Engineering Services.
- ∞ Issue any required addenda information during bidding.
- ∞ Advise District on suitability of successful bidders for accomplishing the work.
- ∞ Assist District in issuing and reviewing any IBs and/or change orders required during construction.
- ∞ Receive, review and distribute shop drawings and submittals to the District for review. Stamp and note submittals with appropriate District approved stamp and review language.
- ∞ Attend the pre-construction meeting with District and successful contractor after award of contract.
- ∞ Attend job site meetings when necessary or questions arise.
- ∞ Conduct final inspection; prepare report of items for correction or completion. Verify all mechanical items for correction or completion are completed in accordance with contract requirements.
- ∞ Review and approve all required operating instructions, operations and maintenance manuals, project warranties as required by contract documents.
- ∞ Provide letter to the owner indicating total completion of the project.
- ∞ All reproduction and reimbursable costs including travel and mileage shall be included in consultant's hourly rate schedule submitted with response to this RFP.
- ∞ All original drawings or specifications commissioned by the District shall become District property. Submit all required Record As-Built Documents to the District in both electronic and reproducible mylar form upon completion of the project. Bid documents shall be provided electronically to the District's reproduction service for printing and issuance.

QUALIFICATIONS OF THE CONSULTANT

- ∞ A minimum of five (5) years of experience as a licensed Mechanical Engineer or Structural Engineer in the State of California with at least three (3) years of that experience in K-12 public school projects. .

SCOPE OF SERVICES - STRUCTURAL ENGINEERING SERVICES

This is an on call Master Services Agreement for Structural Engineering Services. Consultant shall prepare structural design and bid documents and drawings and or structural repair recommendations required by the District whether requiring DSA approval or not. Prepare any structural specifications required by the District per all applicable codes and standards and DSA interpretation of codes and standards. Prepare all proposed design and repair work in accordance with applicable provisions of the District's Architect Design Manual. The specific services of the Consultant will vary from one "Assignment of Project" to another and will be specifically defined for each individual project. However, the tasks will include all services described hereunder:

- ∞ Prepare structural drawings, specifications, structural analysis, calculations, investigations, arrange for and contract for destructive testing, prepare cost estimates, and all other items required to complete the assigned task including obtaining DSA approval where required, providing bid documents, reviewing bids, reviewing submittals and shop drawings, providing construction observation, construction administration and project closeout.
- ∞ Retain other sub-consultants to perform minor supporting services (firms or individuals subject to prior approval of the District) as necessary to provide complete design, including cost estimators, civil engineers, mechanical engineers, electrical engineers and architects.
- ∞ Review and make any necessary corrections to DSA required drawings sufficient to obtain DSA approval.
- ∞ Prepare change order documents during construction; obtain necessary agency and DSA approval.
- ∞ Prepare reports and make investigations, prepare designs and repairs for items of a structural nature for the District including but not limited to its Maintenance and Operations Department.
- ∞ Provide constructability review, biddable document review, quality assurance review of structural engineering work accomplished by other structural engineers.

Project Management:

- ∞ Assist the School District in assembling project bids and bid documents for any structural upgrades.
- ∞ Assist District in bidding of project if necessary.
- ∞ Provide construction administrations services as outlined in District Master Services Agreement for Structural Engineering Services..
- ∞ Issue any required addenda information during bidding.
- ∞ Advise District on suitability of successful bidders for accomplishing the work.

- ∞ Assist District in issuing and reviewing any change orders required during construction.
- ∞ Receive and disburse shop drawings and submittals to the District for review. Stamp and note submittals with appropriate District approved stamp and language.
- ∞ Attend the pre-construction meeting with District and successful contractor after award of contract.
- ∞ Attend job site meetings when necessary or questions arise.
- ∞ Verify all structural punch list items are completed.
- ∞ Provide letter to the owner indicating total completion of the project.
- ∞ All reproduction and reimbursable costs including travel and mileage shall be included in consultant's hourly rate schedule submitted with response to this RFP.
- ∞ All original drawings or specifications commissioned by the District shall become District property, and Record As-Built Documents given to the District in both electronic and reproducible mylar form upon completion of the project. Bid documents shall be provided electronically to the District's reproduction service for printing and issuance.



ATTACHMENT 1
SAMPLE AGREEMENT FOR SERVICES

***MASTER SERVICE AGREEMENT
FOR
ON-CALL STRUCTURAL AND MECHANICAL
ENGINEERING SERVICES***

BETWEEN

SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT

AND

[NAME OF FIRM]

FOR

[NAME OF PROJECT]

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Recitals

<i>Article 1</i>	<i>Term of Agreement</i>
<i>Article 2</i>	<i>Engineer's Scope of Basic Services</i>
<i>Article 3</i>	<i>Engineer's Additional Services</i>
<i>Article 4</i>	<i>District's Responsibilities</i>
<i>Article 5</i>	<i>Engineer's Drawings and Specifications</i>
<i>Article 6</i>	<i>Termination</i>
<i>Article 7</i>	<i>Engineer's Accounting Records</i>
<i>Article 8</i>	<i>Compensation to the Engineer</i>
<i>Article 9</i>	<i>Reimbursable Expenses</i>
<i>Article 10</i>	<i>Engineer's Employees and Consultants</i>
<i>Article 11</i>	<i>Indemnification, Hold Harmless and Defense</i>
<i>Article 12</i>	<i>Insurance</i>
<i>Article 13</i>	<i>Titles for Convenience</i>
<i>Article 14</i>	<i>Governing Law</i>
<i>Article 15</i>	<i>Independent Contractor</i>
<i>Article 16</i>	<i>No Third Parties</i>
<i>Article 17</i>	<i>Binding of Parties, No Assignment</i>
<i>Article 18</i>	<i>Notices</i>
<i>Article 19</i>	<i>Dispute Resolution</i>
<i>Article 20</i>	<i>Cooling-Off Period for Hiring District Employees</i>
<i>Article 21</i>	<i>Interpretation</i>
<i>Article 22</i>	<i>District and Public Policies</i>
<i>Article 23</i>	<i>Titles for Convenience</i>
<i>Article 24</i>	<i>Entire Agreement</i>

Signature Page

List of Exhibits Incorporated into Agreement

Exhibit A: Assignment of Project Form
Exhibit B: Hourly Rates Schedule
Exhibit C: Invoice Format
Exhibit D: IRS W-9 Form
Exhibit D: Fingerprinting Certification

SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT
777 North "F" Street
San Bernardino, California 92410

AGREEMENT FOR STRUCTURAL ENGINEERING SERVICES
AT [NAME OF PROJECT]
FACILITIES MANAGEMENT/MAINTENANCE & OPERATIONS DEPARTMENT

This Structural Engineering Services AGREEMENT (hereinafter referred to as "Agreement") is made and entered into this [DATE], 2010, by and between the **SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT** (hereinafter referred to as "DISTRICT"), located at 777 North "F" Street, San Bernardino, California 92410, and **[NAME OF FIRM]** (hereinafter referred to as "ENGINEER"), located at **[BUSINESS ADDRESS]**, California **[ZIP CODE]**, (both parties hereinafter referred to collectively as the "Parties" and each individually as "Party").

RECITALS

WHEREAS, the DISTRICT is authorized by Section 4525 et seq. and 53060 of the California Government Code to contract with and employ any person or persons for the furnishing of special services and advice in financial, economic, accounting, engineering, architectural, environmental services, legal or administrative matters, if such person or persons is specially trained and experienced and competent to perform the special services required; and,

WHEREAS, DISTRICT desires to obtain structural engineering services for the design of one of the **[NAME OF PROJECT]** ("PROJECT"), located within the DISTRICT; and,

WHEREAS, the ENGINEER itself is, or those hired by the ENGINEER are, specially trained, experienced and competent to render the special services required by the DISTRICT, and such services are needed on a limited basis.

WHEREAS, ENGINEER is fully licensed to provide engineering services in conformity with the laws of the State of California;

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE I

TERM OF AGREEMENT

24.3 PERIOD OF AGREEMENT

This Agreement shall be for a period beginning **[BEGINNING TERM]**, and continuing through **[ENDING DATE]**. At the conclusion of the initial term of the Agreement, the parties may mutually agree in writing to extend Agreement for successive terms.

1.2 SERVICES AS ENUMERATED HEREIN

The ENGINEER's services shall consist of those services performed by the ENGINEER, ENGINEER's employees and ENGINEER's consultants i) as enumerated in Exhibit A – Scope of Work, Articles 2 and 3 and elsewhere in this AGREEMENT.

1.3 STANDARDS OF PROFESSION

The ENGINEER's services shall be performed in a manner that is consistent with professional skill and care and the orderly progress of the work. The ENGINEER represents that ENGINEER will follow the standard of care in ENGINEER's profession in California in performing all services under this AGREEMENT.

ARTICLE 2

2.1 MASTER AGREEMENT, SCOPE OF WORK, AND ASSIGNMENT OF PROJECTS

This Agreement constitutes the Master Services Agreement between the DISTRICT and the ENGINEER and sets forth the basic terms and conditions of the relationship. The Scope of Work consists of the Basic Services shown hereinbelow in Section 2.2, and includes the narrative scope of work and describes the project objectives and defines in general terms the tasks to be completed. The CONSULTANT shall perform the basic services in accordance with the plans, specifications and terms of the Agreement. Similarly, the Agreement shall be supplemented by the DISTRICT with individual **Assignment of Projects (“AOP”)** – **Exhibit “A”** herein incorporated and made a part thereof of this Agreement. The aforesaid AOP shall particularize and more fully describe each individual task. The AOP shall include the CONSULTANT's proposal for said services, the specific scope of work, timeline for the specific project and all costs to the DISTRICT for the services thereunder. The CONSULTANT and those services performed by the CONSULTANT under this Agreement shall, in all cases in which the CONSULTANT is assigned a task or Project under an AOP, continue to be governed by all the terms of this Master Service Agreement and the specific responsibilities and individual tasks set forth and described in the AOP. Such AOP and all inclusions as described herein shall not be changed or altered in any manner without the prior written approval of the DISTRICT, and if the CONSULTANT performs any tasks or services not set forth in the AOP and which have not been authorized in advance by the District, in writing, the DISTRICT shall not be obligated to pay the CONSULTANT for such unauthorized tasks or services.

2.2 BASIC SERVICES

2.2.1 Description of Basic Services. The ENGINEER's Basic Services include those services described in this Article 2, the Scope of Work attached herein as Exhibit A and elsewhere in this AGREEMENT and include structural engineering to produce accurate set of Construction Documents defined as including, but not limited to, the Contract (“DISTRICT/Contractor Contract”) between DISTRICT and Contractor awarded the PROJECT (“Contractor”), general and supplementary conditions of the DISTRICT/Contractor Contract, drawings, specifications, addenda and other documents listed in the DISTRICT/Contractor Contract, and modifications issued after execution of the DISTRICT/Contractor Contract.

2.2.2 Expeditious Performance. The ENGINEER shall complete the ENGINEER's Scope of Basic Services within the timeframes and according to the tasks specified in this AGREEMENT.

2.3 GENERAL

ENGINEER's general responsibilities for the PROJECT include those responsibilities set forth hereinbelow and as described elsewhere in the AGREEMENT.

- 2.3.1 Presentations and Meetings.** The ENGINEER shall prepare for and make formal presentations to the DISTRICT Board of Education, and attend public hearings and other public meetings.
- 2.3.2 Written Record.** The ENGINEER shall make a written record of all meetings, conferences, discussions and decisions made between or among the DISTRICT, ENGINEER and Contractor during all phases of the PROJECT and concerning any material condition in the requirements, scope, performance and/or sequence of the work. The ENGINEER shall provide a copy of such record to the DISTRICT.
- 2.3.3 Schedule for Performance of Services.** The ENGINEER shall submit for the DISTRICT's approval a detailed schedule for the performance of the ENGINEER's services. The schedule may, as the PROJECT proceeds, be adjusted only by mutual written agreement of the parties and shall include allowances for time required for the DISTRICT's review and for approval by authorities having jurisdiction over the PROJECT. The ENGINEER shall consult with the DISTRICT to coordinate the ENGINEER's detailed schedule with the PROJECT master schedule. The time limits established by ENGINEER's detailed schedule as approved by the DISTRICT shall not, except for reasonable cause beyond the ENGINEER's control and as agreed to by the District as set forth herein, be exceeded by the ENGINEER.
- 2.3.4 Obtaining Required Approvals.** The ENGINEER will obtain required approvals from all applicable governmental agencies responsible for electrical, gas, water, sanitary or storm sewer, and telephone services, as well as the OPSC and DSA.
- 2.3.5 Programmatic Changes.** The ENGINEER shall provide services required due to programmatic changes in the PROJECT, including, but not limited to, budget, size, quality, complexity; method of bidding or negotiating the contract for construction, except when such revisions are made after ENGINEER's completion and DISTRICT's approval of Design Development documents which shall be an Additional Service as set forth under Subparagraph 3.1.1.
- 2.3.6 Revisions to Project Documents.** The ENGINEER shall make revisions to PROJECT drawings, specifications, manuals and other affected documents when such revisions are necessary due to the ENGINEER's failure to comply with approvals or written instructions previously given by the DISTRICT; except when revisions are necessary due to DISTRICT's adjustments in the PROJECT program or budget, after ENGINEER's completion of and DISTRICT's approval of Design Development documents which shall be an Additional Service as set forth under Subparagraph 3.1.1.
- 2.3.7 Compliance with Applicable Laws.** The ENGINEER shall comply with all federal, state and local laws, rules, regulations and ordinances that are applicable to the PROJECT.
- 2.3.8 Assist in Legal Proceedings.** ENGINEER shall attend and assist in legal proceedings that arise from errors or omissions of the ENGINEER.
- 2.3.9 Access to the Work.** The ENGINEER shall have access to the work at all times.
- 2.3.10 Modification of Authority.** The duties, responsibilities and limitations of authority of the ENGINEER shall not be restricted, modified or extended without written agreement between the

DISTRICT and the ENGINEER.

2.3.11 Design and Construction Documents by Others. The ENGINEER will be responsible for incorporating the design of building components prepared by other builders into the PROJECT. The ENGINEER will be responsible for the coordination with testing consultants.

2.4 PROGRAMMING AND PLANNING PHASE

ENGINEER's responsibilities for the Programming and Planning Phase of the PROJECT include those responsibilities set forth herein below and as described elsewhere in the AGREEMENT.

2.4.1 Meetings with DISTRICT Staff and Program Development. ENGINEER shall meet with School Site Administrators and other DISTRICT Representatives prior to commencement of design work to obtain their concerns and preferences and to align them with the design for the PROJECT. ENGINEER shall incorporate this information into a scope of work for the project.

2.4.2 Project Coordination Meetings. The ENGINEER shall attend as needed PROJECT coordination meetings between the ENGINEER, its Consultants, the DISTRICT's representative(s), and other Consultants of the DISTRICT during PROJECT development.

2.4.3 Project Description. The ENGINEER shall provide a PROJECT description which includes the DISTRICT's needs, program, and the requirements of the PROJECT.

2.4.4 Hazardous Material Abatement. ENGINEER shall coordinate design documents with hazardous material Assessment Reports and Abatement Plan provided by the Asbestos, Lead & Hazardous Materials third party Consultant(s). The District shall retain the services of the Asbestos, Lead and Hazardous Material Consultant.

2.4.5 Existing Conditions and Facilities. The ENGINEER shall investigate existing conditions and facilities and verify drawings of such conditions and facilities.

2.5 CONSTRUCTION DOCUMENTS PHASE (FINAL PLANS)

ENGINEER's responsibilities for the Construction Documents Phase of the PROJECT include those responsibilities set forth hereinbelow and as described elsewhere in the AGREEMENT.

2.5.1 Construction Documents. The ENGINEER shall prepare Construction Documents in the most current AutoCAD format and specifications setting forth, in detail, the requirements for the construction of the scope of work in conformity with all applicable governmental and code requirements and requirements of OPSC and DSA. The Construction Documents shall show all the work to be done, the materials, workmanship, finishes.

2.5.2 Design Revisions to Comply with Budget and Scope. If the estimated PROJECT Construction Cost exceeds the budget constraint, the ENGINEER shall make all necessary design revisions at no cost to the DISTRICT to comply with the budget and scope set by the DISTRICT.

2.6 BIDDING AND AWARD PHASE

ENGINEER's responsibilities for the Programming and Planning Phase of the PROJECT include those responsibilities set forth hereinbelow and as described elsewhere in the AGREEMENT and in the

Construction Documents.

2.6.1 Reproducible Construction Documents, AutoCAD Diskette File. The ENGINEER shall deposit a reproducible set of Construction Documents and specifications at a reprographics company specified by DISTRICT for the bid and for printing of additional sets of plans and specifications during the PROJECT. In addition, ENGINEER shall provide DISTRICT with an AutoCAD diskette file.

2.6.2 Modify Construction Documents. If the lowest bid exceeds the budget for the PROJECT, the ENGINEER, in consultation with and at the direction of the DISTRICT, shall provide such modifications in the Construction Documents as necessary to bring the cost of the PROJECT within the PROJECT budget.

2.7 CONSTRUCTION PHASE

ENGINEER's responsibilities for the Construction Phase of the PROJECT include those responsibilities set forth hereinbelow and as described elsewhere in the AGREEMENT.

2.7.1 Commencement of Construction Phase. The Construction Phase will commence with the award of the Construction Contract to Contractor.

2.7.2 Reproducible Contract Documents. The ENGINEER shall reproduce three sets of contract documents at each phase submittal and all progress prints for ENGINEER's and its consultants' use as part of basic services. All other sets printed by the ENGINEER for the DISTRICT or Contractors shall be performed by the DISTRICT's low bidder for printing services and approved by the District in advance.

2.7.3 Technical Direction to Inspector. The ENGINEER shall provide technical direction to a full-time PROJECT inspector employed by and responsible to the DISTRICT as required by applicable law.

2.7.4 Endeavor to Secure Contractor Compliance. The ENGINEER shall endeavor to secure compliance by Contractor with the contract requirements, but such endeavor shall not in any case be construed as ENGINEER's guarantee of the performance of Contractor's contract requirements.

2.7.5 Interpreter of Construction Documents. The ENGINEER shall be the interpreter of the requirements of the Construction Documents and shall advise the DISTRICT as to the performance by the Contractor thereunder.

2.7.6 Recommendations on Claims. The ENGINEER shall make written recommendations to the DISTRICT on claims relating to the execution and progress of the work and all matters and questions relating thereto. The ENGINEER's recommendations in matters relating to artistic effect shall be consistent with the intent of the Construction Documents.

2.7.7 Nonconforming Work. The ENGINEER shall advise the DISTRICT in writing to reject work that does not conform to the Construction Documents. The ENGINEER shall promptly inform the DISTRICT in writing whenever, in the ENGINEER's opinion, it may be necessary to stop the work to avoid the improper performance of the AGREEMENT. The ENGINEER has authority to require additional inspection or testing of the work in accordance with the provisions of the Construction Documents, whether work is fabricated, installed or completed.

- 2.7.8 No Orders That Amend Construction Documents.** The ENGINEER shall not issue orders to Contractor that might commit the DISTRICT to expenses not covered in the Construction Documents or otherwise amend the Construction Documents without first obtaining the written approval of the DISTRICT.
- 2.7.9 DISTRICT's Representative.** The ENGINEER shall be the DISTRICT's representative during construction and shall advise and consult with the DISTRICT. The ENGINEER shall have authority to act on behalf of the DISTRICT only to the extent provided in this AGREEMENT unless otherwise modified in writing.
- 2.7.10 Services Made Necessary by Defects or Deficiencies.** The ENGINEER shall, at no additional cost to the DISTRICT, provide services made necessary by defect or deficiencies in the work of the Contractor which through reasonable care should have been discovered by the ENGINEER and promptly reported to the DISTRICT and Contractor but which ENGINEER failed to do.
- 2.7.11 Review of Contractor's Submittals.** The ENGINEER shall review and approve or take other appropriate action upon Contractor's submittals of shop drawings, product data, and samples for the purpose of checking for conformance with the Construction Documents. The ENGINEER's actions shall not delay the work, but shall, in the ENGINEER's professional judgment, allow for sufficient time to permit adequate review.
- 2.7.12 Evaluation of Contractor Performance.** The ENGINEER shall provide written evaluation of the performance of the Contractor under the requirements of the Construction Documents when requested in writing by the DISTRICT.
- 2.7.13 Governing Authorities, PROJECT Closeout.** The ENGINEER shall be responsible for gathering information and processing forms required by applicable governing authorities, such as building departments, OPSC and DSA, in a timely manner and ensure proper PROJECT closeout and DSA certification.
- 2.7.14 AutoCAD File of Record Conditions.** The ENGINEER shall, at no additional cost to the DISTRICT, prepare and submit to the DISTRICT an AutoCAD file of all record conditions.
- 2.7.15 Documents Due Prior to Start of Construction.** Prior to start of construction, the following two documents shall be prepared by the ENGINEER and submitted to the DISTRICT:
- (i) Contract Information Form SSS 102; and
 - (ii) Inspector Qualification Record Form SSS 5, which shall be submitted ten (10) calendar days prior to the time of starting construction.

2.8 PROJECT CLOSEOUT

ENGINEER's responsibilities for the Closeout Phase of the PROJECT include those responsibilities set forth hereinbelow and as described elsewhere in the AGREEMENT.

- 2.8.1 Ensure Delivery of Documents.** The ENGINEER shall ensure delivery of all of the documents described in .1 and .2 below to the DSA for review prior to issuance of a "Certificate of Completion."

- .1** During the period that the PROJECT is under construction, the following documents are required:
- (i) copies of all of the Inspector of Record’s semi-monthly reports; and
 - (ii) copies of laboratory reports on all tests and laboratory inspections performed on the PROJECT and returned to the PROJECT.
- .2** Upon completion of construction of the PROJECT, the following documents are required:
- (i) copy of the Notice of Completion;
 - (ii) Final Verified Report Form SSS 6A/E certifying that all work is one hundred percent (100%) complete from the ENGINEER, Structural Engineer;
 - (iii) Final Verified Report Form SSS 6 certifying that all work is one hundred percent (100%) complete from the Contractor or Contractors, Inspector of Record and Special Inspectors;
 - (iv) Verified Reports of Testing and Inspections as specified on the approved drawings and specifications, i.e., Final Laboratory Report, Welding, Glued-Laminated Timber, and other similar documents;
 - (v) copies of the signature page of all Addenda as approved by DSA;
 - (vi) copies of the signature pages of all Deferred Approvals as approved by DSA;
 - (vi) copies of the signature page of all Change Orders as approved by DSA; and
 - (vii) verification by the Inspector of Record (“IOR”) that all items noted on any Field Trip Notes have been corrected.

ARTICLE 3
ENGINEER’S ADDITIONAL SERVICES

3.1 ADDITIONAL SERVICES DEFINED, COMPENSATION

ENGINEER’s Additional Services are defined in 3.1.1 through 3.1.25 below and are not included as Basic Services under this AGREEMENT. Additional Services shall be paid using the hourly rates shown in **Exhibit B**, attached hereto and made a part thereof of this AGREEMENT unless otherwise agreed in writing between DISTRICT and ENGINEER. ENGINEER shall notify the DISTRICT in writing of the need for Additional Services that, in the ENGINEER’s opinion, are required due to circumstances beyond the ENGINEER’s control. ENGINEER shall obtain advance written authorization from the DISTRICT before rendering Additional Services, and ENGINEER shall not be entitled to compensation for Additional Services unless said written DISTRICT authorization has been obtained in advance. If the DISTRICT deems that such Additional Services are not required, DISTRICT shall provide written notice of such to ENGINEER within ten (10) calendar days of ENGINEER’s written notice to DISTRICT, and

ENGINEER shall, if so notified, have no obligation to provide such Additional Services and shall not be held liable by the DISTRICT for any losses or damages that may arise from not providing such Additional Services. ENGINEER's compensation for Additional Services shall be in addition to Basic Services and shall be paid using the hourly rates shown in Exhibit B, attached hereto and made a part thereof of this AGREEMENT unless otherwise agreed in writing between DISTRICT and ENGINEER.

3.1.1 Revisions to Drawings, Specifications and Other PROJECT Documents. Making material revisions to drawings, specifications or other PROJECT documents i) when such revisions are required by the enactment, revised interpretation, jurisdictional differences in interpretation, or revision of codes, laws or regulations subsequent to the preparation, completion and DSA approved and/or other agency of the Construction Documents; ii) when such revisions are inconsistent with written approvals or instructions previously given by the DISTRICT; iii) when revisions are made necessary by the DISTRICT's adjustment to the PROJECT program or budget or method of bidding or negotiating the contract for construction after ENGINEER's completion of and DISTRICT's approval of Design Development documents; or iv) when revisions are necessary due to any services made necessary as a result of the DISTRICT's request, after the execution of the AGREEMENT, for modifications to or substitution of ENGINEER's standard form General and Supplementary Conditions.

3.1.2 Change Orders Beyond Control of ENGINEER. Preparing drawings, specifications and other documentation and supporting data, and providing other services in connection with contract change orders to the extent that the adjustment in the ENGINEER's compensation resulting from the adjusted Construction Cost is not commensurate with the services of the ENGINEER, provided that such contract change orders are required by causes beyond the control of the ENGINEER and are not the result of the negligence, errors or omissions on the part of ENGINEER.

3.1.3 Damage to Work by Fire or Other Causes. Providing consultation concerning replacement of work damaged by fire or other causes during construction and furnishing services required in connection with the replacement of such work, except where damage resulted from the negligent acts, errors or omissions or the willful misconduct of the ENGINEER.

3.1.4 Default of Contractor or Failure of Other Parties. Providing services made necessary by the default or termination of the Contractor, by defects or deficiencies in the work of the Contractor, or by failure of performance of either the DISTRICT, Contractor or others performing services or providing work on the PROJECT, and which do not arise from negligence, errors or omissions of ENGINEER.

3.1.5 PROJECT Let on Segregated Basis. If, after the completion of Design Development documents, the DISTRICT requests that the PROJECT be let on a segregated basis, where segregation does not arise from ENGINEER exceeding the estimated budget constraint, then plan preparation and contract administration work, including services in connection with bidding, negotiation or construction, to prepare the segregated plans shall be an Additional Service, subject to prior negotiation and written DISTRICT approval. Segregation under this Subparagraph 3.1.5 shall be meant to include separate (multiple prime) or sequential bids, bid alternates, and phasing or fast-tracking of the work. DISTRICT acknowledges that such segregated procedures may complicate the coordination of the Contract documents and may result in additional construction costs, for which the ENGINEER shall not be liable.

3.1.6 Contract Administration After Construction Contract Time Has Been Exceeded. Providing contract administration services after the construction contract time has been exceeded through no

fault of the ENGINEER. The ENGINEER's compensation is expressly conditioned on the lack of fault of the ENGINEER.

- 3.1.7 Services After Completion.** Providing services other than those identified in the AGREEMENT as Basic and Additional Services after Final Completion.
- 3.1.8 Special Studies.** Providing services consisting of investigation, research and analysis of the DISTRICT's special requirements for the PROJECT; and documentation of findings, conclusions and recommendations for master planning to provide design services relative to future facilities, systems and equipment that are not intended to be constructed as part of the PROJECT during the Construction Phase
- 3.1.9 Renderings.** Providing services relating to graphic pictorial representations, as required by the DISTRICT, of the proposed PROJECT and consisting of black and white elevation and perspective views; and color elevation and perspective views.
- 3.1.10 Model Construction.** Providing services consisting of preparation of small-scale block models showing relationship of structures to site; moderate-scale block models of structures designed for the PROJECT; moderate-scale detailed models of structures designed for the PROJECT, showing both interior and exterior design; and large-scale models of designated interior or exterior components of the PROJECT.
- 3.1.11 Graphics Design.** Providing services consisting of design of interior and exterior special graphics and logos for the PROJECT; documentation of requirements for procurement of graphics work; managing procurement of graphics work; and coordination of delivery and installation. It is understood that services for interior and exterior signage for the PROJECT are Basic Services, as set forth under Subparagraph 2.2.7 of this AGREEMENT.
- 3.1.12 Fine Arts and Crafts Services.** Providing services relating to acquisition of fine arts or crafts to be a part of the PROJECT and consisting of consultations on selection, commissioning and execution; design integration; managing procurement; and purchasing fine arts or crafts on the DISTRICT's behalf.
- 3.1.13 Special Furnishings Design.** Providing services relating to ENGINEER-designed special furnishings and equipment incorporated into or provided for the PROJECT and consisting of design and documentation; specifications or standards; management of procurement; coordination of installation; and purchase on the DISTRICT's behalf.
- 3.1.14 Non-Building Equipment Selection.** Providing services relating to equipment and furnishings not incorporated into the construction of the PROJECT and consisting of establishment of needs and criteria; preparation of requirements; specifications and bidding or purchasing procedures; management of procurement; coordination of delivery and installation; and purchase of non-building equipment on the DISTRICT's behalf.
- 3.1.15 Project Promotion and Public Relations.** Providing services relating to presentation of the PROJECT to the public or identified groups and consisting of preparation of press releases; preparation of special brochures and promotional pieces; assistance in production and distribution of promotional materials; and presentations at public relations and promotional meetings.
- 3.1.16 Leasing Brochures.** Providing services relating to preparation of special material to assist the DISTRICT in leasing the PROJECT and consisting of design; preparation of illustrations and

text; and arranging for and managing production.

3.1.17 Expert Witness. Providing services consisting of preparing to serve and serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding.

3.1.18 Computer Applications. Providing services consisting of computer program development and computer program search and acquisition, for programming; economic feasibility; financial analysis; detailed PROJECT construction scheduling; market analysis; and construction cost accounting.

3.1.19 Materials and Systems Testing. Providing services relating to testing of components of the completed PROJECT for conformance with construction contract requirements and consisting of procurement of testing services; and monitoring testing.

3.1.20 Mock-Up. Providing services relating to the construction of full- or half-size details of components of the PROJECT for study and testing during the Design Phase and consisting of design and documentation for the required mock-ups; management and coordination of pricing and contracting for mock-up services; construction administration of mock-up construction activities; arrangements for testing and monitoring performance of mock-ups; administration of testing and monitoring services; and review, analysis and reporting of results of testing and monitoring services.

3.1.21 Motion Pictures and Videotape. Providing services relating to preparation of promotional or explanatory motion picture or videotape presentations of the PROJECT during the Design or Construction Phases.

3.1.22 Coordination with Non-Design Professionals. Providing services consisting of consultation and coordination with non-design professionals not referenced in the AGREEMENT, including but not limited to economists, sociologists, attorneys and accountants, for preparation of economic studies; and sociological impact studies.

3.1.23 Artist Support. Providing services consisting of collaboration with and architectural and engineering design support of artists selected by the DISTRICT; and incorporation, coordination and implementation of artwork into the design of the PROJECT.

3.1.24 Publication of Information. Providing services consisting of informational summary documents.

3.1.25 Other Services. Providing any other services not otherwise included in this AGREEMENT or not customarily furnished in accordance with generally accepted engineering practice.

3.2 PROJECT REPRESENTATIVES

If requested by the DISTRICT as set forth herein, ENGINEER shall provide one or more PROJECT Representatives to assist in carrying out more extensive representation at the PROJECT jobsite than is described in Article 2. PROJECT Representatives shall be selected, employed and directed by the ENGINEER, and the ENGINEER shall be compensated therefore as negotiated and agreed upon in advance, in writing, by the DISTRICT and ENGINEER. Through the observations of such PROJECT Representatives, the ENGINEER shall endeavor to provide further protection for the DISTRICT against defects and deficiencies in the work, but the furnishing of such PROJECT representation shall not modify the rights, responsibilities or obligations of the ENGINEER as described elsewhere in this AGREEMENT.

ARTICLE 4
DISTRICT'S RESPONSIBILITIES

4.1 INFORMATION TO ENGINEER

The DISTRICT shall provide to the ENGINEER information regarding requirements for the PROJECT, including but not limited to the DISTRICT's objectives, schedule, constraints and criteria.

4.2 REVIEW AND APPROVAL OF PROJECT BUDGET

The DISTRICT shall review and approve in writing the current, overall budget for the PROJECT, including the construction cost for the PROJECT, which shall have been prepared by the ENGINEER.

4.3 ADMINISTRATIVE PROCEDURES, DISTRICT REPRESENTATIVE, ORDERS TO CONTRACTORS

The DISTRICT shall inform the ENGINEER in writing of administrative procedures required of the ENGINEER for the PROJECT and shall name a representative ("DISTRICT Representative") authorized to act on DISTRICT's behalf. The DISTRICT, or DISTRICT Representative, if authorized, shall promptly render decisions pertaining thereto to avoid unreasonable delays in the progress of the PROJECT. The DISTRICT shall observe the procedure of issuing any orders to Contractors solely through the ENGINEER and in writing.

4.4 PROGRAM MANAGER

The DISTRICT has employed a Program Manager. The Program Manager will designate its representative for the project, who will work and coordinate closely with the ENGINEER as a DISTRICT Representative. The Program Manager's services, duties and responsibilities are described in the Agreement between the DISTRICT and the Program Manager and in other tasks as assigned to the Program Manager and approved by the DISTRICT from time to time by their mutual written agreement.

4.5 FAULT OR DEFECT IN THE PROJECT

The DISTRICT shall give prompt written notice to the ENGINEER if the DISTRICT becomes aware of any fault or defect in the PROJECT or nonconformance with the Construction Documents. However, the DISTRICT's failure or omission to do so shall not relieve the ENGINEER of ENGINEER's responsibilities under Title 21, Title 24, and the Field Act hereunder. The DISTRICT shall have no duty under this AGREEMENT to observe, inspect or investigate the PROJECT.

4.6 LANGUAGE FOR ENGINEER REPRESENTATIONS

The DISTRICT shall submit the proposed language of representations requested of the ENGINEER or ENGINEER's consultants to the ENGINEER for ENGINEER's review and written approval at least fourteen (14) calendar days prior to the due date for execution of such representations. The ENGINEER will not be asked to make representations that are inconsistent with rights and obligations in the AGREEMENT.

4.7 TESTS AND INSPECTIONS

The DISTRICT shall furnish or otherwise retain inspection and testing services in connection with construction of the PROJECT as required by any and all applicable codes, regulations, ordinances and the terms of the contracts. In addition, the DISTRICT shall provide, as required by any and all applicable codes, regulations, ordinances, terms of the contracts or conditions encountered, testing and inspections for hazardous or toxic materials.

4.8 DISCLOSURE OF INFORMATION

The DISTRICT shall disclose, to the extent known to the DISTRICT, the results and reports of prior tests, inspections or investigations conducted for the PROJECT including but limited to, existing building systems, on-site, off-site utility and service systems; chemical, air and water pollution; hazardous and toxic materials; or other environmental and subsurface conditions. The DISTRICT shall disclose information known to the DISTRICT regarding the presence of all pollutants and/or hazardous materials at the PROJECT'S site. The provisions herein stated in this Paragraph 4.8 shall not relieve the ENGINEER of responsibilities as required in any applicable State regulations and laws and due diligence.

ARTICLE 5 ENGINEER'S DRAWINGS AND SPECIFICATIONS

5.1 DOCUMENTS PROPERTY OF THE DISTRICT

All documents, including, but not limited to, plans, drawings, specifications, record drawings, models, mockups, renderings and other documents, including all computer files and AutoCAD files, prepared by the ENGINEER or the ENGINEER's Consultants for this PROJECT, shall be and remain the property of the DISTRICT pursuant to Education Code Section 17316 for the purposes of repair, maintenance, renovation, modernization and other purposes as they relate to the PROJECT. The DISTRICT, however, shall not be precluded from using the ENGINEER's or ENGINEER's Consultant's documents enumerated hereinabove for the purposes of additions, alignments and other development on the PROJECT site.

5.2 DISTRICT'S REUSE AND MODIFICATION OF ENGINEER'S PLANS AND SPECIFICATIONS

The DISTRICT explicitly reserves the right, at its sole discretion, to reuse and modify ENGINEER's plans, specifications and other documents for a project or projects other than that which is the subject of this AGREEMENT and for which the ENGINEER is not the ENGINEER of record. A fee of three percent (3%) of the Construction Costs or the actual costs directly associated with the differing site conditions of such other project or projects, whichever is less, shall be paid to the ENGINEER by the DISTRICT for such reuse. In the event of such reuse or modification of the ENGINEER's drawings, specifications or other documents by any person, firm or legal entity, the DISTRICT agrees to indemnify, defend and hold the ENGINEER harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorney's fees accruing to or resulting from any and all persons, firms; or any other legal entity; on account of any damage or loss to property or persons, including, but not limited to, death, arising out of such use, reuse or modification of the ENGINEER's drawings, specifications or other documents. The DISTRICT further agrees, when reusing or modifying ENGINEER's documents, to remove the names and seals of the ENGINEER and the ENGINEER's Consultants from the title block and signature pages of said documents. The DISTRICT, however, may use the ENGINEER's plans and documents as enumerated in this Article for the purposes of additions, alignments or other development on the PROJECT site. Prior to reuse of the ENGINEER's documents, the DISTRICT agrees to notify the ENGINEER in writing of such reuse.

**ARTICLE 6
TERMINATION**

6.1 TERMINATION FOR SUBSTANTIAL FAILURE OF PERFORMANCE BY EITHER PARTY

This AGREEMENT may be terminated by either party upon fourteen (14) calendar days prior written notice to the other party in the event of a substantial failure of performance by such other party, including insolvency of ENGINEER or if the DISTRICT should decide to abandon or indefinitely postpone the PROJECT.

6.1.1 Payments Due ENGINEER Upon Failure of DISTRICT. In the event of a termination based upon abandonment or postponement by DISTRICT, the DISTRICT shall pay the ENGINEER for all services performed and all expenses incurred by the ENGINEER under this AGREEMENT, when said services and expenses are supported by documentary evidence, including payroll records and expense reports, up until the date of the abandonment or postponement, including any sums due the ENGINEER for DISTRICT-approved Additional Services. In ascertaining the services actually rendered hereunder by the ENGINEER up to the date of termination of this AGREEMENT, DISTRICT shall give consideration to both completed work and work in process of completion and to complete and incomplete drawings and other documents whether delivered to the DISTRICT or in the possession of the ENGINEER.

6.1.2 Payments Due DISTRICT Upon Failure of ENGINEER. In the event that termination of the ENGINEER by the DISTRICT is for a substantial failure of performance by the ENGINEER, all damages and costs to the DISTRICT associated with said termination, including increased consultant and replacement ENGINEER costs, shall be deducted from DISTRICT's payments due the ENGINEER. In cases where such damages and costs to the DISTRICT associated with termination of the ENGINEER due to ENGINEER's substantial failure of performance exceed payments due the ENGINEER from the DISTRICT, ENGINEER shall promptly reimburse DISTRICT for such damages and costs. Said reimbursement shall be negotiated between the ENGINEER and the DISTRICT.

6.2 TERMINATION OF ENGINEER BY DISTRICT WITHOUT CAUSE

This AGREEMENT may be terminated without cause by DISTRICT upon fourteen (14) calendar days written notice to the ENGINEER. In the event of such termination without cause, the DISTRICT shall pay the ENGINEER for all services performed and all expenses incurred by the ENGINEER under this AGREEMENT, when said services and expenses are supported by documentary evidence, including payroll records and expense reports, up until the date of termination specified in the notice of termination, including any sums due the ENGINEER for DISTRICT-approved Additional Services. In ascertaining the services actually rendered hereunder by the ENGINEER up to the date of termination of this AGREEMENT, DISTRICT shall give consideration to both completed work and work in process of completion and to complete and incomplete drawings and other documents whether delivered to the DISTRICT or in the possession of the ENGINEER.

In addition, ENGINEER shall be reimbursed by the DISTRICT for reasonable termination costs as follows. Prior to fifty percent (50%) completion of the ENGINEER's portion of the PROJECT,

ENGINEER shall be paid for termination costs in an amount equal to three percent (3%) of the sum due the ENGINEER as set forth under this Paragraph 8.2, or, upon completion of fifty percent (50%) or more of ENGINEER's portion of the PROJECT, ENGINEER shall be paid for termination costs in an amount equal to three percent (3%) of the unpaid balance of this AGREEMENT, in which latter case said three percent (3%) payment is agreed by the parties to compensate the ENGINEER for the unpaid profit that ENGINEER would have made under the PROJECT upon PROJECT completion and is consideration to ENGINEER for entry into this Paragraph 8.2, Termination of ENGINEER by District Without Cause.

Termination of ENGINEER due to the DISTRICT's inability to obtain PROJECT funding for any reason shall not be defined under this AGREEMENT as termination without cause and shall not obligate DISTRICT to reimburse ENGINEER for termination costs in any amount as a result of DISTRICT's inability to obtain funding.

6.3 DISPUTES

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 hereunder, the parties shall attempt to resolve the dispute as set forth in Article 22, Dispute Resolution, of this AGREEMENT.

ARTICLE 7 ENGINEER'S ACCOUNTING RECORDS

7.1 GENERALLY RECOGNIZED ACCOUNTING BASIS

Records of the ENGINEER's direct personnel and reimbursable expenses pertaining to any Additional Services performed for the PROJECT under this AGREEMENT and records of accounts between the DISTRICT and the ENGINEER shall be kept on a generally recognized accounting basis and shall be available to the DISTRICT or DISTRICT's authorized representative at times mutually convenient to the parties.

ARTICLE 8 COMPENSATION TO THE ENGINEER

8.1 COMPENSATION FOR SERVICES RENDERED

The DISTRICT agrees to compensate the ENGINEER for services rendered as a fixed fee of **[CONTRACT AMOUNT]** (IN WORDS), using the hourly rates as shown in Exhibit B ("Hourly Rates Schedule"), including approved reimbursables.

8.1.1 Invoices as Work Progresses The ENGINEER shall present an invoice to the DISTRICT for services rendered, as the work progresses. Each invoice shall include only services, which have been performed. The DISTRICT shall not owe any fee for services contemplated hereunder but not performed.

8.1.2 Invoicing and Payment The ENGINEER shall submit to the DISTRICT a detailed invoice for the preceding month in the format provided in **Exhibit "C," Invoice Format**, hereunder. Upon the DISTRICT's receipt and approval of such invoice, the DISTRICT shall issue payment to the ENGINEER within forty-five (45) calendar days. If the DISTRICT disputes any portion of such invoice, the DISTRICT shall promptly notify the ENGINEER and shall pay the undisputed

balance until such time as when the disputed invoices has been resolved, then payment shall be made accordingly. The DISTRICT shall not pay any fees for services contemplated hereunder but not performed.

8.1.3 No Withholding of Federal or State Income Tax The DISTRICT will not withhold federal or state income tax deductions from payments made to the ENGINEER under this AGREEMENT.

8.2 COMPENSATION FOR SERVICES DURING TIME EXTENSIONS

To the extent that the time initially established for the completion of ENGINEER's services is exceeded or extended through no fault of the ENGINEER, compensation for any services rendered during the additional period of time shall be negotiated and subject to prior written approval by the DISTRICT's Board.

8.3 DISTRICT'S APPROVAL AND REVIEW OF EXPENSES

Expenses incurred by the ENGINEER and ENGINEER's employees and consultants in the interest of the PROJECT shall have prior written DISTRICT approval before they are incurred, and records of such expenses shall be provided to the DISTRICT for DISTRICT's review.

ARTICLE 9 REIMBURSABLE EXPENSES

9.1 REIMBURSABLE EXPENSES DEFINED

ENGINEER shall be reimbursed for normal business expenses on the PROJECT. Total reimbursement to ENGINEER shall not exceed 10% (ten percent) of ENGINEER's Basic and Additional Services fees and shall be reimbursed at one and one-tenth (1.1) times the expenses incurred by the ENGINEER, subject to the conditions below.

9.1.1 All reimbursable expenses in excess of \$250 shall be approved by the DISTRICT in advance of the expenditure. Reimbursable expenses shall include shipping and mailing for use by the DISTRICT or its consultants. Presentation materials at each phase submittal, color boards and reproduction of same, and three sets of all materials submitted with each phase submittal shall not be reimbursable. Additional submittal materials shall be reimbursable only if authorized by the District in advance.

9.1.2 Cost of printing and plotting for ENGINEER and its consultants use, travel, mileage, postage, faxes, deliveries, telephone and communication between ENGINEER and its Consultants are not reimbursable.

9.1.3 Additional Printing and reproductions outside of the three sets at each phase submittal shall be performed by the DISTRICT's low bidder for printing services and approved by the DISTRICT in advance.

9.1.4 Cost of computer plots and computer time are not reimbursable.

9.1.5 Fees advanced on behalf of the DISTRICT for securing approval of authorities having jurisdiction over the PROJECT shall be reimbursed at cost.

- 9.1.6** Two black and white copies plus a CD of colored photo documentation of the existing facility conditions shall be provided to the DISTRICT at no charge. Additional copies of photo documentation or video documentation shall be reimbursable if authorized by the DISTRICT in advance.

ARTICLE 10
ENGINEER'S EMPLOYEES AND CONSULTANTS

10.1 DISTRICT APPROVAL OF CONSULTANT FIRMS, NO CONTRACTUAL RELATIONSHIP WITH DISTRICT

The ENGINEER shall submit, for written approval by the DISTRICT, the names of the consultant firms proposed by the ENGINEER for the PROJECT. Nothing in this AGREEMENT shall create any contractual relationship between the DISTRICT and any Consultants employed by the ENGINEER under the terms of this AGREEMENT.

10.2 CONSULTANT LICENSING AND EXPERIENCE REQUIREMENTS, REPLACEMENT AT DISTRICT REQUEST

ENGINEER's consultants shall be licensed to practice in California and have relevant experience with California school design and construction during the last five years. If any employee or consultant of the ENGINEER is not acceptable to the DISTRICT, then that employee or consultant shall be replaced with an acceptable, competent person at the DISTRICT's request.

ARTICLE 11
INDEMNIFICATION, HOLD HARMLESS AND DEFENSE

11.1 INDEMNIFY AND HOLD HARMLESS

To the fullest extent permitted by law, ENGINEER agrees to indemnify, and hold the DISTRICT entirely harmless from all liability arising out of:

- (i) any and all claims under Workers' Compensation acts and other employee benefit acts with respect to ENGINEER's employees or ENGINEER's subcontractors' employees arising out of ENGINEER's work under this AGREEMENT;
- (ii) liability for damages for (a) death or bodily injury to person; (b) injury to, loss or theft of property; (c) any failure or alleged failure to comply with any provision of law or (d) any other loss, damage or expense arising under either (a), (b); or (c) above, sustained by the ENGINEER or the DISTRICT, or any person, firm or corporation employed by the ENGINEER or the DISTRICT upon or in connection with the PROJECT to the extent that the above are caused by the negligent acts, recklessness, or willful misconduct, errors or omissions of the ENGINEER, except for liability resulting from the negligence, or wrongful conduct of the DISTRICT, its officers, employees, agents or independent ENGINEERS who are directly employed by the DISTRICT or by any third party; and
- (iii) any loss, injury to or death of persons or damage to property to the extent caused by any negligent act, recklessness, or willful misconduct, errors or omissions of the ENGINEER or the DISTRICT, or

any person, firm or corporation employed by the ENGINEER or the DISTRICT, either directly or by independent contract, including all such damages due to loss or theft, sustained by any person, firm or corporation including the DISTRICT, arising out of, or in any way connected with the PROJECT, including injury or damage either on or off DISTRICT property; but not for any loss, injury, death or damages caused by the negligence, or wrongful conduct of the DISTRICT or by any third party.

11.2 DEFEND

The ENGINEER, 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 DISTRICT, its officers, agents or employees, on any such claim or liability caused by any negligent act, recklessness, or willful misconduct, errors and omissions of the ENGINEER or any person, firm or corporation employed by the ENGINEER, and shall pay or satisfy any judgment that may be rendered against the DISTRICT, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

ARTICLE 12 INSURANCE

12.1 INSURANCE POLICIES

ENGINEER shall purchase and maintain, for the duration of the PROJECT, policies of insurance with an insurer or insurers qualified to do business in the State of California and acceptable to DISTRICT that will protect ENGINEER and DISTRICT from claims that may arise out of or result from ENGINEER'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 as set forth hereinbelow.

12.1.1 Workers' Compensation and Employers Liability Insurance. The ENGINEER shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, including workers compensation insurance laws, if necessary. The ENGINEER understands that, as an independent contractor, ENGINEER is not covered by any type of DISTRICT insurance, including workers compensation insurance. If and when the ENGINEER employs or uses independent contractors, volunteers or others not covered by the ENGINEER's workers compensation coverage, the ENGINEER shall advise such persons providing services hereunder at the direction of the ENGINEER that workers compensation insurance is not provided by the DISTRICT, and the ENGINEER shall hold the DISTRICT harmless from any and all claims for damages that may be asserted by such persons.

12.1.2 Comprehensive Commercial General and Auto Liability Insurance. The ENGINEER shall carry comprehensive general and auto liability insurance for any operated automobile when on District premises.

Each policy of insurance required under this Subparagraph 12.1 shall name the DISTRICT and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of ENGINEER hereunder, such policy is primary and any insurance carried by DISTRICT is excess and noncontributory with such primary insurance; shall state that not less than thirty (30) days written notice shall be given to DISTRICT prior to cancellation; and, shall waive all rights of subrogation.

12.1.3 Professional Liability Insurance. The ENGINEER shall carry professional liability insurance, including contractual liability, with limits of not less than ONE MILLION DOLLARS (\$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 at rates consistent with the time of execution of this AGREEMENT, adjusted for inflation. In the event that ENGINEER subcontracts any portion of ENGINEER's duties, ENGINEER shall require any such subcontractor to purchase and maintain insurance coverage as provided in this Subparagraph 12.1.3. Failure to maintain professional liability insurance as set forth herein is a material breach of this AGREEMENT and grounds for immediate termination.

12.2 SUBCONTRACTOR INSURANCE REQUIREMENTS

In the event that ENGINEER subcontracts any portion of ENGINEER's duties, ENGINEER shall require any such subcontractor to purchase and maintain insurance coverage for the types of insurance referenced in Subparagraphs 12.1.1, 12.1.2, and 12.1.3, in amounts that are appropriate with respect to that subcontractor's part of work, but which shall in no event be less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per occurrence.

ARTICLE 13 TITLES FOR CONVENIENCE

13.1 FOR CONVENIENCE ONLY, NO MODIFICATIONS OF RIGHTS AND OBLIGATIONS

The Table of Contents and headings of Articles, Paragraphs and Subparagraphs in this AGREEMENT are for convenience only and shall not modify the rights and obligations created by the AGREEMENT.

ARTICLE 14 GOVERNING LAW

14.1 LAWS OF THE STATE OF CALIFORNIA AND APPLICABLE REGULATIONS

This AGREEMENT shall be interpreted, governed and construed and ENGINEER's services shall be performed in compliance with the laws of the State of California and applicable government regulations, building codes and ordinances in effect on the date of this AGREEMENT.

ARTICLE 15 INDEPENDENT CONTRACTOR

15.1 ENGINEER AS AN INDEPENDENT CONTRACTOR

ENGINEER, in the performance of this AGREEMENT, shall be and act as an independent contractor. ENGINEER understands and agrees that ENGINEER and all of ENGINEER's employees shall not be considered officers, employees or agents 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. ENGINEER assumes the full responsibility for the acts and/or omissions of ENGINEER's employees or agents as they relate to the services to be provided under this AGREEMENT. ENGINEER shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective ENGINEER's employees.

**ARTICLE 16
NO THIRD PARTIES**

16.1 NO CONTRACTUAL RELATIONSHIPS CREATED WITH THIRD PARTIES

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 DISTRICT or the ENGINEER.

**ARTICLE 17
BINDING OF PARTIES, NO ASSIGNMENT**

17.1 PARTIES BIND THEMSELVES AND SUCCESSORS, NO ASSIGNMENT

The DISTRICT and the ENGINEER, 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. ENGINEER shall not assign this AGREEMENT.

**ARTICLE 18
NOTICES**

18.1 ALL NOTICES IN WRITING, DEEMED SERVED

All notices, demands, requests or approvals to be given under this AGREEMENT shall be given in writing and conclusively shall be deemed served when delivered personally or on the third business day after the deposit thereof in the United States mail, postage prepaid, registered or certified, and addressed as hereinafter provided.

All notices, demands, requests or approvals from the ENGINEER to the DISTRICT shall be addressed to the DISTRICT at:

San Bernardino City Unified School District
777 North F Street
San Bernardino, California, 92410
Attention: Wael Elatar or Designee

All notices, demands, requests or approvals from the DISTRICT to the ENGINEER shall be addressed to the ENGINEER at:

[NAME OF FIRM]
[ADDRESS]
[CITY, STATE AND ZIP CODE]
Attention: [CONTACT NAME]

ARTICLE 19
DISPUTE RESOLUTION

19.1 PURPOSE OF DISPUTE RESOLUTION PROCESS, THREE PHASES

19.1.1 Purpose of Dispute Resolution Process. The purpose of the Dispute Resolution Process (“DRP”) described herein is to allow the DISTRICT to receive from the ENGINEER the services, plans, specifications and other deliverables as specified in the AGREEMENT, and at reasonable cost, and to allow the ENGINEER to receive reasonable profit for ENGINEER’s work. The entire DRP shall be conducted in a professional and cooperative manner with the expectation by the DISTRICT and the ENGINEER of eliminating or greatly reducing subsequent costly litigation for all parties.

Three Phases of DRP. The DRP consists of the following three (3) phases, any of which may be terminated or eliminated by successful negotiation and agreement between the parties:

.1 Confer-and-Negotiate Conferences

- i) Level 1
- ii) Level 2

.2 Disputes Review Board

.3 Arbitration

19.2 DISTRICT REVIEW OF CLAIMS

19.2.1 District’s Response, Request for Additional Information. For all claims, counterclaims, disputes, controversies and other matters in question of Fifty Thousand Dollars (\$50,000) or less, the DISTRICT shall respond in writing within fifteen (15) calendar days of DISTRICT’s verified receipt of the original claim; or, for all claims, counterclaims, disputes, controversies and other matters in question over Fifty Thousand Dollars (\$50,000), the DISTRICT shall respond in writing within thirty (30) calendar days of DISTRICT’s verified receipt of the original claim; provided, however, that, if the DISTRICT reasonably determines from said review that additional supporting documentation is necessary, the DISTRICT shall request such additional supporting documentation from the ENGINEER in writing within ten (10) calendar days after the DISTRICT’s verified receipt of the original claim, counterclaim, dispute, controversy or other matter in question. Such additional supporting documentation shall be furnished to the DISTRICT by the ENGINEER no later than ten (10) calendar days after such written request from the DISTRICT, or, if the ENGINEER deems that it is unable to furnish same to the DISTRICT within ten (10) calendar days, the ENGINEER shall, prior to the expiration of the ten (10) days, submit a written request to the DISTRICT specifying the additional amount of time requested and the reasons for such time extension, which request may be granted or denied at the sole discretion of the DISTRICT in its best judgment. If additional supporting documentation is required thereafter by the DISTRICT, it shall be requested and provided pursuant to the provisions and timeframes set forth in this Article 22.

19.2.2 District’s Response to Further Documentation. For claims of Fifty Thousand Dollars (\$50,000) or less, as further documented by the ENGINEER, the DISTRICT’s written response shall be

submitted to the ENGINEER within ten (10) calendar days after receipt of said further documentation or within a period of time no greater than that taken by the ENGINEER to deliver said further documentation to the DISTRICT, whichever is greater; or, for claims of over Fifty Thousand Dollars (\$50,000), as further documented by the ENGINEER, the DISTRICT's written response shall be submitted to the ENGINEER within fifteen (15) calendar days after receipt of said further documentation or within a period of time no greater than that taken by the ENGINEER to deliver said further documentation to the DISTRICT, whichever is greater.

19.3 CONFER-AND-NEGOTIATE CONFERENCES

19.3.1 ENGINEER's Dispute of District's Response, Request for Confer-and-Negotiate Conference. If the ENGINEER disputes the DISTRICT's response or the DISTRICT fails to respond within the timeframes set forth herein, the ENGINEER may so notify the DISTRICT, in writing, either within ten (10) calendar days of receipt of the DISTRICT's response or within ten (10) calendar days of the DISTRICT's failure to respond within the timeframes set forth herein, respectively, and demand an informal conference to confer and negotiate for settlement of the issues in dispute. Upon verified receipt by the DISTRICT of such written demand from the ENGINEER, the DISTRICT shall schedule a Confer-and-Negotiate Conference within twenty (20) calendar days of DISTRICT's verified receipt of said demand for settlement of the dispute. Attorneys shall not be representatives for Confer-and-Negotiate Conferences, nor shall attorneys be present at any of the proceedings.

19.3.2 Two (2) Levels of Confer-and-Negotiate Conferences. Confer-and-Negotiate Conferences shall be initiated as set forth in Subparagraph 22.3.1 above and shall be divided as follows into two (2) levels of conference representation:

.1 Level 1 Representatives. Level 1 representatives shall be on-site management personnel as set forth below; have binding signatory authority as a condition precedent to being a Level 1 representative; and make the initial determination of facts and contract interpretation. If, after good faith efforts by all parties, no resolution can be reached at the Level 1 conference, a second round of conference negotiations shall commence with Level 2 representatives.

Level 1 On-Site Management

Entity	Representative
DISTRICT	Project Manager
ENGINEER	Project ENGINEER
Construction Manager	Construction Manager

.2 Level 2 Representatives. Level 2 representatives shall be off-site management personnel as set forth below; and review summaries from Level 1, specifically, any agreements reached and any outstanding dispute issues.

Level 2 Off-Site Management

Entity	Representative
DISTRICT	Facilities Administrator or Designee
ENGINEER	Principal in Charge
Construction Manager	Project Executive

All Level 2 representatives may respond with their opinions and, at their discretion, do any of

the following:

- i) return the disputed issues to Level 1 for more information or direction to resolve specific matters;
- ii) modify Level 1 recommendations;
- iii) reject Level 1 recommendations;
- iv) negotiate and agree to any other matters as Level 2 representatives deem proper; or
- v) accept Level 1 recommendations.

19.3.3 Remaining Disputes, Filing of Claim with Disputes Review Board. If, following the Confer-and-Negotiate Conferences, both Levels 1 and 2, a substantial portion of the claim remains in dispute, the parties may agree in writing to file same with the Disputes Review Board (“DRB”) as described in Paragraph 22.4 below.

19.4 DISPUTES REVIEW BOARD

19.4.1 Advantages of Disputes Review Board. If the parties agree in writing, any claim unresolved after Levels 1 and 2 of the Confer-and-Negotiate Conferences may be filed with the DRB. The DRB shall provide a forum that promotes cooperation between the DISTRICT and the ENGINEER and provides a means of resolving disputes equitably, economically and on a real-time basis. With an established DRB to address disputes as they arise, the design process will continue with the DISTRICT’s and the ENGINEER’s efforts focused on the work instead of on the claims. The anticipated results are that delays are prevented or kept at a minimum, costs are kept under control, and expensive and time-consuming preparations for formal litigation are avoided. The DRB recommendations are made by impartial experts who are knowledgeable in the details of the project. Settlements can be made quickly, usually in two to three months.

19.4.2 Description of DRB.

.1 Three- (3-) Party DRB. A three- (3-) party DRB shall be organized as soon as practicable after the DISTRICT’s award of contract to the ENGINEER in order to be in place before disputes arise. The function of the DRB parties shall be to hear disputes on an informal basis and provide recommendations for their timely resolution. The DRB will be in a position to act quickly to resolve disputes before the parties adopt hard positions leading to litigation.

.2 Selection of Qualified DRB Members. The selection of three (3) qualified DRB members is critical, in that both the DISTRICT and the ENGINEER must feel confident that the members will be fair and equitable. To this end, the DISTRICT and the ENGINEER shall each select an outside representative acceptable to the other party, and a mutually selected, neutral third-party expert for the pending issue. Once convened, the DRB shall remain in existence for the duration of the project, with representatives being assigned thereto by position as appropriate.

.3 Periodic DRB Meetings and Progress Reports. Prior to the commencement of construction

of the PROJECT, DRB meetings shall be held at a site to be mutually determined by the DISTRICT, the ENGINEER and the DRB. After the commencement of construction, DRB meetings shall be held at the job site. DRB meetings shall be held at least every two months, or oftener as necessary, to develop and maintain a well informed view of and familiarity with the PROJECT. To assist in this, DRB members shall be provided with periodic progress reports prepared jointly by the DISTRICT and the ENGINEER.

- .4 Next Step After Confer-and-Negotiate Conferences.** The DRB shall not replace or supersede Levels 1 and 2 of the Confer-and-Negotiate Conferences, but shall be the next step directed at facilitating dispute resolution in a timely and equitable manner prior to any action involving arbitration or litigation.

19.4.3 Functions and Limitations of the DRB.

- .1 DRB Not a ENGINEER or Advocate.** The DRB shall not at any time be in a consulting position regarding the solution of problems on the project, nor shall the DRB act in the capacity of an advocate. Considering the expertise of the DRB and its relatively close proximity to the PROJECT, it is anticipated that it will often be difficult for the DISTRICT and the ENGINEER to refrain from soliciting the DRB's advice when problems arise. However, advice provided by the DRB that may later be involved in a dispute would completely undermine the function and integrity of the DRB. The agreement between the DISTRICT and the ENGINEER establishing the DRB shall, therefore, specifically prohibit the DRB or its individual members from providing such advice to either party.
- .2 No Usurpation of Owner's Authority; Role of Providing Independent Assessment of Merit of Disputes.** The DRB shall not usurp the DISTRICT's authority to determine what is designed or built or whether the work of the ENGINEER is adequate. The role of the DRB shall be to provide independent assessment on the merit of significant disputes. For example, the issue might be whether or not some item of work was included in the AGREEMENT or resulted from some action of the ENGINEER; or, in contrast, whether the work was outside the scope of the AGREEMENT, thereby entitling the ENGINEER to additional compensation.

19.4.4 DRB Recommendations.

DRB Recommendations Not Binding Unless Agreed, DRB Findings as Evidence. Unless agreed to in writing by both parties, DRB recommendations shall not be binding on either party. However, there shall be strong incentive to accept such recommendations. If a dispute proceeds to arbitration or litigation, the proceedings of the DRB shall be made available as evidence. The written recommendations of the DRB as a group of experienced, knowledgeable and impartial experts, constituted per the provisions of this Article 22, shall be available as a full explanation to support the DRB's recommendations for settlement.

- 19.5 Mediation.** All unresolved claims through the Dispute Resolution Process described above, shall, be submitted to mediation, unless said submission to mediation would result in a delay in initiating or prosecuting a proceeding in an arbitration or judicial forum that would thereby prejudice the DISTRICT or the ENGINEER. The DISTRICT and the ENGINEER shall agree in writing upon the identity of the mediator and the rules and procedures of the mediation, or, if such agreement cannot be reached, the dispute shall be submitted to mediation under the then current Construction Industry Mediation Rules of the American Arbitration Association.

19.6 *Judicial Enforcement of Arbitration.* In any judicial proceeding to enforce this agreement to arbitrate, the sole issues to be determined by the Court shall be those set forth in 9 U.S.C. Section 4 Federal Arbitration Act, and such issues shall be determined by the Court without a jury. All other issues such as but not limited to arbitrability, prerequisites to arbitration, compliance with contractual time limits, applicability of indemnity clauses, clauses limiting damages, and statutes of limitations shall be reviewed and determined by the arbitrator(s), whose decisions regarding same shall be final and binding. There shall be no interlocutory appeal of any Court order compelling arbitration.

19.7 *No Delay or Suspension of Services by ENGINEER, Payment by District*

In the event that a claim, dispute or other matter in question between the DISTRICT and the ENGINEER arises out of or relating to this AGREEMENT or breach thereof, the ENGINEER shall in no event nor at any time during the term of this AGREEMENT delay or suspend, by reason of such claim, dispute or other matter in question or breach as specified herein, any services required to be provided by the ENGINEER under this AGREEMENT, nor shall the DISTRICT withhold, by reason of such claim, dispute or other matter in question or breach as specified herein, any payments of sums otherwise due and payable to the ENGINEER under the terms of this AGREEMENT.

19.8 *PREVAILING PARTY, REASONABLE ATTORNEY'S FEES*

Should any proceeding be commenced between the parties to this AGREEMENT seeking to enforce any of its provisions, including, but not limited to, fee provisions, the prevailing party in such proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorney's fees which shall be determined by the Court or forum in such proceeding or in a separate action brought for that purpose. For the purpose of this provision, "prevailing party" shall include a party that dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.

**ARTICLE 20
COOLING-OFF PERIOD FOR HIRING DISTRICT EMPLOYEES**

If any current, former or future employee of the DISTRICT subsequently becomes an employee of the ENGINEER, said employee shall not be billed by the ENGINEER on any current or future contract for work that the ENGINEER may have with the DISTRICT for a period of one (1) year, at minimum, from the date of said employee's end of employment with the DISTRICT, unless explicitly approved in advance, in writing, by the DISTRICT, which approval may be granted or withheld at the sole discretion of the DISTRICT.

**ARTICLE 21
INTERPRETATION**

In interpreting this Agreement, it shall be deemed that it was prepared jointly by the Parties with full access to legal counsel of their own. No ambiguity shall be resolved against any Party on the premise that the Party or the Party's attorneys were solely responsible for drafting this Agreement or any provision thereof.

ARTICLE 22
DISTRICT AND PUBLIC POLICIES

22.1 ENGINEER'S RECEIPT OF DISTRICT POLICIES, W-9 FORM AND FINGERPRINTING CERTIFICATION

By signing this Agreement, the ENGINEER acknowledges receipt and acceptance of the following DISTRICT policies:

- (i) Smoking and Use of Tobacco at District Facilities Policy (No. 3520a-b);
- (ii) Affirmative Action Program for Equal Employment Opportunity Policy (No. 4136);
- (iii) Nondiscriminatory Harassment Policy (No. 4136.1a-c); and
- (iv) Drug-Free Workplace Policy (NO. 4205).

The ENGINEER further agrees to complete and return to the DISTRICT, prior to beginning any work herein, as shown in **Exhibit D** (IRS W-9 Form) and **Exhibit E** ("Fingerprint and Criminal Background Check Certification").

ARTICLE 23
TITLES FOR CONVENIENCE

The Table of Contents and headings of Articles, Paragraphs and Subparagraphs in this Agreement are for convenience only and shall not modify the rights and obligations created by the Agreement.

ARTICLE 24
ENTIRE AGREEMENT

24.1 ENTIRE AND INTEGRATED AGREEMENT

This Agreement and the documents incorporated herein and made part of this Agreement, including, but not limited to, the exhibits, attachments, designs, drawings, Project Budget, and Master Project Schedule, represent the entire and integrated Agreement between the DISTRICT and the ENGINEER and supersede all prior negotiations, representations or agreements, either written or oral.

24.2 AMENDMENT BY WRITTEN AGREEMENT

This AGREEMENT may not be amended or modified except by an agreement in writing signed by both the DISTRICT and the ENGINEER.

24.3 COUNTERPARTS

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

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

ENGINEER:

[NAME OF FIRM]

DISTRICT:

**SAN BERNARDINO CITY
UNIFIED SCHOOL DISTRICT**

By: _____
Signature

Printed Name

Title

Date

By: _____
Signature

Mohammad Z. Islam
Printed Name

Chief Business and Financial Officer
Title

Date

EXHIBIT A
ASSIGNMENT OF PROJECT (“AOP”) FORM

EXHIBIT B
HOURLY RATE SCHEDULE

Additional Services will be performed on a time and expense basis according to the hourly rate schedules provided hereunder:

<u>Position(s)</u>	<u>Rates</u>
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These rates shall continue throughout the duration of the project and may only be increased by written amendment between the District and the Architect.

EXHIBIT C
INVOICE FORMAT

EXHIBIT D
IRS W-9 FORM

EXHIBIT E
CONTRACTOR CERTIFICATION

ATTACHMENT 2
CONSULTANT QUESTIONNAIRE

The Consultant shall furnish all the following information accurately and completely. Failure to comply with this requirement may cause a proposal rejection. Additional sheets may be attached if necessary. "You" or "your" as used herein refers to the Consultant's firm and/or any of its owners, officers, directors, shareholders, parties or principals.

If the same information is provided elsewhere in your proposal and qualification materials, then please clearly identify such in the following questions.

Please be advised that the District may request verbal or written clarifications, additional information, an interview or presentation at any time regarding this proposal.

SECTION A – GENERAL INFORMATION

(1) Firm name, address and contact information:

(2) Telephone: _____ Facsimile: _____

Internet Address: _____

(3) Type of firm: (check one)

Individual Partnership Corporation State

(4) Names and titles of all principals/officers of the firm:

Name Title Phone Number

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(5) Please list any applicable certifications and licenses and their associated numbers:

(6) Have you or any of your principals ever conducted similar services under a different name or certification or different license number? _____

a. If Yes, give firm name, address and certification or license number.

(i) Name _____

(ii) Address _____

(iii) License No. (if any) _____

(7) How many years has your firm been in business under its present business name? _____.

(8) How many years of experience does your firm have providing similar services? _____.

(9) How many public agencies has your firm provided similar services?
_____.

(10) Please list the public agencies, including any school districts, that your firm has provided similar services for:

(11) Please attach a short history of the firm including whether it is local, national, or international as well as approximate number of employees. Also provide the number of firm offices and locations.

(12) Please attach a copy of your firm's most recent financial statement or other financial instruments that would establish your firm's ability to complete its obligations under any agreement resulting from this RFP.

(13) Please attach or list below why your firm should be selected by the District to provide the solicited services.

SECTION B – LEGAL

(14) Have you or any of your principals been in litigation or arbitration of any kind on a question or questions relating to similar services involving a school or community college district during the prior five (5) years? _____.

(a) If Yes, provide the name of the public agency and briefly detail the dispute:

(15) Have you ever had a service agreement terminated for convenience or default in the prior five (5) years? _____.

(b) If Yes, provide details including the name of the other party:

(16) Is your firm, owners, and/or any principal or manager involved in or is your firm aware of any pending litigation regarding professional misconduct, bad faith, discrimination, or sexual harassment? _____.

(a) If Yes, provide details:

(17) Is your firm, owners, and/or any principals or manager involved in or aware of any pending disciplinary action and/or investigation conducted by any local, state or federal agency? _____.

(a) If Yes, provide details:

(18) Does your firm maintain errors and omissions coverage? _____.

If so, please provide a current copy of the declaration page showing the

maximum liability or policy value.

(19) Will your firm comply with all District, local, State and Federal legal requirements, regulations and laws? _____.

SECTION C – ADDITIONAL INFORMATION

(20) Please provide any other information that may assist the District in ascertaining your qualifications, capability and customer service under any resultant agreement.

SECTION D - REFERENCES

(21) Have you ever had any direct or indirect business, financial or other connection with any official, employee or consultant of the District? Identify any conflict of interest in (a):

(a) Please elaborate and discuss any potential, apparent or actual conflict of interest:

(22) Each firm must include the following references:

The Consultant is required to submit a list of its most relevant services provided in the last five (5) years as a structural or mechanical engineering firm that are of the approximate size of project described in this RFP, including School Districts. The list shall include the size of the project, scope of the work, date services were performed, number of hours of service for the project, client company name, client contact name and phone number

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing **Consultant Questionnaire pages one (1) through four (4)** is true and correct.

Executed this _____ day of _____, 2010, at _____, State of _____.
City, County

Company Name

Signature

Title

Print Name

ATTACHMENT 3

HOURLY RATES AND REIMBURSABLES EXPENSES

NAME	TITLE	HOURLY RATE

The hourly rates shall include the fully burdened hourly rates of all proposed personnel, including names and titles

REIMBURSABLE EXPENSES:

Consultants shall list the reimbursable expenses, if any, on a unit cost basis.

Reimbursable Expenses	Unit cost (\$)

ATTACHMENT 4

EQUAL OPPORTUNITY CERTIFICATION

To: San Bernardino City Unified School District
956 W. 9th Street
San Bernardino, CA 92411

Firm: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Telephone (_____) _____ FAX (_____) _____

Number of Employees _____

This firm is:

Independently Owned and Operated

An Affiliate of _____

Parent Company _____

A Subsidiary of _____

Address _____

A Division of _____

This is to certify that we are an Equal Opportunity Employer and have made a good faith effort to improve minority employment.

Signature _____

Title _____

Date _____

ATTACHMENT 5

**CONSULTANT'S CERTIFICATE
REGARDING WORKMEN'S COMPENSATION**

Labor Code Section 3700:

“Every employer except the state and all political subdivisions or institutions thereof, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.
- (b) 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 his employees.”

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workmen's Compensation or to undertake self-insurance in accordance with the provision of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Signature

Name of Principal

Title

(In accordance with Article 5 [commencing at Section 1860], Chapter 1, Part ____
Division 2 of the Labor Code, the above certificate must be signed and filed with the
awarding body prior to performance of any work under this contract.)



FACILITIES BUSINESS OUTREACH REGISTRATION						
Company Information			RFP/BID Contact Information			
Company Name		Name		Title/Position		
Address		Cell phone		-		
		Office phone		Fax		
City		E-mail				
State		Web Address				
Zip						
Ownership Type <small>(check type)</small>	Firm Size	License(s)	Disadvantaged Business Certification <small>(check all that apply)</small>			
<input type="checkbox"/> Sole proprietor	Gross \$/yr	<input type="checkbox"/> A – Gen Engrg	<input type="checkbox"/> Small Business Enterprise (SBE)			
<input type="checkbox"/> Corporation	# of Employees:	<input type="checkbox"/> B – Gen Building	<input type="checkbox"/> Disabled Veteran-owned Business Enterprise (DVBE)			
<input type="checkbox"/> Partnership		<input type="checkbox"/> C - Specialty	<input type="checkbox"/> Minority-owned Business Enterprise (MBE)			
<input type="checkbox"/> Nonprofit		C#’s:	<input type="checkbox"/> Woman-owned Business Enterprise (WBE)			
<input type="checkbox"/> Other: (describe)			<input type="checkbox"/> Other:			
Services, Business Goods <small>(CSI divisions per MasterFormat 2004)</small>						
<input type="checkbox"/> Architecture	<input type="checkbox"/>	Electronic Safety and Security (28)	<input type="checkbox"/>	General Contracting	<input type="checkbox"/>	Plumbing (22)
<input type="checkbox"/> Communications/ IT (27)	<input type="checkbox"/>	Engineering	<input type="checkbox"/>	HVAC (23)	<input type="checkbox"/>	Portable/Mod Facilities
<input type="checkbox"/> Concrete (03)	<input type="checkbox"/>	Environmental (02)	<input type="checkbox"/>	Inspection (01)	<input type="checkbox"/>	Real Estate, Appraisal, Property Management
<input type="checkbox"/> Construction Mgmt	<input type="checkbox"/>	Equipment (11)	<input type="checkbox"/>	Labor Compliance	<input type="checkbox"/>	Special Construction (13)
<input type="checkbox"/> Conveying systems (14)	<input type="checkbox"/>	Exterior Improvements (incl landscape/irr) (32)	<input type="checkbox"/>	Legal	<input type="checkbox"/>	Specialties (10)
<input type="checkbox"/> Demo/Remediation(02)	<input type="checkbox"/>	Financial	<input type="checkbox"/>	Masonry (04)	<input type="checkbox"/>	Surveying (02)
<input type="checkbox"/> Doors and Windows (08)	<input type="checkbox"/>	Finishes (09)	<input type="checkbox"/>	Metals (05)	<input type="checkbox"/>	Thermal and Moisture (07)
<input type="checkbox"/> Earthwork (31)	<input type="checkbox"/>	Fire Suppression (21)	<input type="checkbox"/>	Moving/Storage	<input type="checkbox"/>	Utilities (33)
<input type="checkbox"/> Electrical (26)	<input type="checkbox"/>	Furnishings (12)	<input type="checkbox"/>	Plan Room	<input type="checkbox"/>	Woods and Plastics (06)
Business Outreach Profile						
1a. Receive courtesy notices of SBCUSD contract opportunities via: <input type="checkbox"/> USPS <input type="checkbox"/> fax <input type="checkbox"/> e-mail (DISCLAIMER: COURTESY NOTICES DO NOT RELIEVE VENDOR’S RESPONSIBILITY TO SEEK OUT ANY AND ALL SBCUSD NOTICES)						
b. Heard about SBCUSD business outreach program via: <input type="checkbox"/> district <input type="checkbox"/> chamber <input type="checkbox"/> trade assoc <input type="checkbox"/> plan room <input type="checkbox"/> newspaper <input type="checkbox"/> mail <input type="checkbox"/> other:						
2. Local Business Identification (check all that apply, specify city, attach documentation i.e. business license)						
<input type="checkbox"/> San Bernardino County/City:		<input type="checkbox"/> Riverside County/City:		<input type="checkbox"/> Non-local County:		
City:						
3. “Ed Friendly” Designation (check all that apply)				Contact Name/Tel	School or Ed Friendly Partner	
<input type="checkbox"/> As a business, support SBCUSD education programs (donate time, talent, treasure)						
<input type="checkbox"/> Partner/Subcontract with other local businesses who support SBCUSD ed programs						
<input type="checkbox"/> Interested in learning more about how to become “Ed Friendly”						

