

REQUEST FOR QUALIFICATIONS (RFQ)
Santa Clara Unified School District
Districtwide Ongoing Professional Services for
DTSC Compliance and/or CEQA Compliance
RFQ #21-22-005

ATTACHMENT B
MASTER AGREEMENT

This Agreement for Districtwide Ongoing Professional Services for DTSC Compliance and/or CEQA Compliance ("Agreement") is entered into [Click here to enter a date.](#) by and between SANTA CLARA UNIFIED SCHOOL DISTRICT ("District") and

("Consultant"); the District and the Consultant are collectively referred to herein as "the Parties." This Agreement is entered into with reference to the following Recitals, all of which are incorporated herein by this reference.

RECITALS

WHEREAS, the District desires to retain a Consultant as an independent contractor to provide Professional Services in connection with future Assigned Projects; the specific terms and conditions for an Assigned Project will be as set forth in the Project Assignment Amendment ("PAA") in substantially the form attached hereto as Exhibit A.

WHEREAS, the District issued a Request for Qualifications ("RFQ") requesting that qualified consultants submit proposals to provide Professional Services ("Services").

WHEREAS, the Consultant submitted a written response to the RFQ ("the RFQ Response"); by this reference, the RFQ and the RFQ Response are incorporated into this Agreement.

WHEREAS, personnel of the Firm providing Professional Services are duly licensed as architects or registered as engineers under the laws of the State of California, if applicable.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the District and Consultant agree as follows:

AGREEMENT

ARTICLE 1 BASIC SERVICES

- 1.1 General. The Professional Services set forth in this Agreement will be completed by personnel employed by the Consultant who are skilled, experienced and qualified to perform and complete the Professional Services assigned to them.
- 1.2 Professional Services PAA. The Consultant will complete Professional Services for an Assigned Project as requested from time-to-time by the District by the District's issuance of a PAA for the Assigned Project. The scope of Professional Services to be completed by the Consultant for an Assigned Project will be in accordance with the Assigned Project PAA; compensation to the Consultant for Professional Services for an Assigned Project will be as set forth in the PAA. The Consultant acknowledges that the District has the sole discretion to retain others to provide Professional Services for a District work of improvement without liability to the Consultant or be deemed in default of the District's obligations hereunder. Unless the District issues the Consultant PAA to provide Professional Services for an Assigned Project, the Consultant is not obligated

to provide any Professional Services and there is no compensation due from the District to the Consultant.

- 1.3 Consultant's Standard of Care. The Professional Services and authorized Additional Services for an Assigned Project, if any, will be performed and provided by Consultant and its personnel: (i) using the Consultant's best skill and attention; (ii) with due care and in accordance with applicable standards of professional care; (iii) in accordance with applicable laws, rules and regulations; and (iv) in accordance with the terms of this Agreement and the PAA issued by the District for the Assigned Project. The Consultant acknowledges that the Professional Services are to be provided and performed in conjunction with other services provided by other parties relating to an Assigned Project, including without limitation, the Architect, Construction Manager and the Contractor for the Assigned Project. Accordingly, Consultant acknowledges and agrees that the Professional Services for each Assigned Project will be provided as required by the District's schedule for completing planning, designing, bidding and/or construction of an Assigned Project and that the Professional Services will be provided and completed in a manner so as not to delay, hinder or interrupt the orderly and timely progression and completion the Assigned Project. The Consultant is liable to the District for the consequences of its failure to provide, perform and/or complete the Professional Services or authorized Additional Services in accordance with the terms of this Agreement and the PAA for the Assigned Project.
- 1.4 Consultant as Independent Contractor. In providing Professional Services under this Agreement, the Consultant is an independent contractor to the District. The express terms of this Agreement set forth the limited extent to which the Consultant is authorized to act as an agent or representative of the District. The Consultant is liable to the District and third parties for the consequences of its conduct which exceed the express limited scope of the Consultant to act on behalf of the District.
- 1.5 Relationship of Consultant to Other Assigned Project Participants. The Consultant's services hereunder will be provided in conjunction with contracts between the District and other Assigned Project participants including the Architect and the Construction Manager, if one is retained by the District for an Assigned Project. The Consultant's services and the Documents prepared by or through the Consultant for an Assigned Project will conform to processes, procedures and standards established by the District for an Assigned Project.
- 1.6 Meetings. The Consultant, as necessary, appropriate or requested by the District, will attend and participate in meetings, forums and other conferences ("Meetings") relating to the design, bidding or construction of an Assigned Project. Without limiting the generality of the foregoing, the Consultant will attend and participate in Meetings with the Construction Manager, District, end-user groups, shared governance councils/committees, Board of Trustees and organized public forums relating to an Assigned Project. The Consultant will promptly respond to matters assigned to or designated for response, review or other action by the Consultant. If requested by the District, the Consultant will prepare and distribute minutes of Meetings relating to an Assigned Project.
- 1.7 Phased Construction/Construction by Multiple Trade Contractors. Whether or not reflected in the Project Assignment Agreement issued by the District for any Assigned Project, the District reserves the right to complete demolition, construction or material removal of an Assigned Project in phases and/or by multiple Trade Contractors, each under separate contract with the District for constructing a portion of an Assigned Project. The election of the District to phase construction of an Assigned Project or to

construct an Assigned Project with multiple Trade Contractors will not result in increase of the Contract Price to the Consultant for an Assigned Project.

- 1.8 Existing Conditions Investigation. The Consultant will inspect the Site of an Assigned Project to ascertain existing conditions, facilities or other improvements on or about the Site of an Assigned Project as necessary to produce complete and accurate Documents for the Assigned Project. If the Assigned Project involves any existing improvements, the Consultant will review any materials provided to the Consultant by or through the District relating to the as-built and existing condition of the improvements on or about the Site. The Consultant will promptly notify the District and Construction Manager in writing of discrepancies encountered between the existing conditions observed by the Consultant and the materials provided by or through the District.
- 1.9 Conformity to District Standards. Documents prepared by or through the Consultant for an Assigned Project will conform to District standards for materials, equipment and/or workmanship. Modifications of the Documents for an Assigned Project to conform to District materials, equipment or workmanship standards will be without adjustment of the Contract Price for the Assigned Project.
- 1.10 Compliance with Regulatory Agencies. The Consultant will respond to and comply with all requests relating to an Assigned Project made by any federal, state, regional or local governmental or quasi-governmental agency with jurisdiction over any portion of the Assigned Project, including without limitation, the Office of Public School Construction ("OPSC"), Division of State Architect ("DSA"), City of Santa Clara and County of Santa Clara, Department of Toxic Substances Control ("DTSC"), Air Resources Board, California Department of Education ("CDE") and all other Federal, State and Local agencies with Regulatory Oversight (collectively "Regulatory Agencies"). All of the Consultant's verbal communications with Regulatory Agencies will be reduced to writing. The Consultant will copy the District Representative with all written communications received from any of the Regulatory Agencies relating to an Assigned Project or generated by the Consultant to any Regulatory Agency relating to an Assigned Project. The Consultant is responsible and liable to the District for all consequences of the Consultant's failure or refusal to timely, completely and accurately respond to any communications or requests from/by/between Regulatory Agencies relating to an Assigned Project.
- 1.11 Assigned Projects. The Consultant acknowledges that the District has the sole discretion to retain others to provide other Professional Services or related design Professional Services for any District work of improvement. Unless the District issues the Consultant a PAA for an Assigned Project pursuant to the terms hereof, the Consultant is not obligated to provide any services hereunder and there is no compensation due from the District to the Consultant.

ARTICLE 2 **ADDITIONAL SERVICES**

- 2.1 Additional Services; General. The services described in this Paragraph 2 are not included in the scope of Consultant's Basic Services for an Assigned Project, unless expressly set forth in the PAA for an Assigned Project. If the District requests the Consultant to complete any of the following Additional Services and such Additional Services are not necessary as a result (in whole or in part) of deficiencies in the Design Documents for an Assigned Project or fault/neglect of the Consultant, the Consultant will be compensated for such District-requested Additional Services as set forth in this Agreement. If any of the following Additional Services are requested by the District

as a result of deficiencies in the Documents for an Assigned Project and/or fault/neglect of the Consultant, no compensation is due from the District to the Consultant for completing such Additional Services.

- 2.2 Document Revisions. Making significant revisions to the Drawings, Specifications or other Documents where such revisions are: (i) inconsistent with approval or instructions previously given by the District, including revisions necessary due to significant adjustments in the District's Program, budget or construction completion time for the Assigned Project; (ii) required by enactment of, or revisions to codes, laws, rules or regulations applicable to the Work of the Assigned Project where such enactment or revision could not have been reasonably foreseen by Consultant; or (iii) due to the District's failure to render decisions in a timely manner.
- 2.3 District/Contractor Default. Services required or necessary as a result of the default or termination of the Contractor, failure of performance by the District or the Contractor, or major defects or deficiencies in the Work of the Contractor which were not and could not have been noted by the Consultant in its Site observations.
- 2.4 Documents Changes. Preparing Drawings, Specifications or other Design Documents, along with supporting data in connection with Changes to the Work of an Assigned Project.
- 2.5 Contractor Substitutions. Providing services in connection with the evaluation(s) or request(s) by the Contractor for an Assigned Project to provide substitute or alternative systems, equipment or materials to those indicated in the Design Documents and making subsequent revisions to the Design Documents and other documentation resulting therefrom.
- 2.6 Damaged Work. Providing consultation or other services in connection with repairs, replacements or corrections of the Work of an Assigned Project damaged or destroyed by fire or other casualty so long as no negligent or willful acts, omissions or other conduct of Consultant or its employees, agents or representatives have caused or contributed to such damage or destruction to an Assigned Project.
- 2.7 Excessive Contractor Claims. Providing services in connection with evaluation of an extensive and excessive number of claims submitted by the Contractor for an Assigned Project, except to the extent that such claims arise out of the services, Design Documents or other work product provided or performed by or through Consultant hereunder.
- 2.8 Expert Witness. Providing services as an expert witness in connection with a public hearing, arbitration or other legal proceeding arising out of an Assigned Project, except where Consultant is a party thereto, is called as a percipient witness (in which case Consultant will be entitled to witness fees and costs as allowed by law) or is found liable for damages or other relief.
- 2.9 Future Improvements. Services relative to future systems, facilities or equipment not included within the scope of an Assigned Project.
- 2.10 Existing Conditions. Services to investigate existing conditions or facilities not included within the scope of an Assigned Project or to provide measured drawings thereof.
- 2.11 Financial/Special Studies. Providing financial feasibility or other special study in connection with an Assigned Project.
- 2.12 Special Surveys. Providing planning surveys or special surveys for Site evaluations, comparative studies or assessment of environmental conditions, to the extent not included in the scope of Basic Services for an Assigned Project.

- 2.13 Operational/Maintenance Cost Analysis. Analysis of ownership, operational or maintenance costs of an Assigned Project or the components thereof to the District.

ARTICLE 3 PAYMENT OF PREVAILING WAGE RATES

- 3.1 Labor Code. The Consultant will comply with applicable provisions of the Labor Code, Division 2, Part 7, Chapter 1, Article 1-5 of the Labor Code at §§ 1773.8 et seq., including the payment of the general prevailing rate of per diem wages for categories of work identified by the Department of Industrial Relations performed during the course of providing Professional Services.
- 3.2 DIR Registration. At all times during the Work, the Consultant and all subcontractors of any tier will be DIR registered contractors. Performance of the Work by the Consultant or any subcontractor of any tier without being a DIR registered contractor at the time Work is performed is the Contractor's default in performance of a material obligation of the Contractor under the Contract Documents.
- 3.3 Certified Payroll Records Submittal to Labor Commissioner. The Consultant and all Subcontractors will prepare and submit Certified Payroll Records to the Labor Commissioner in compliance with requirements established in Labor Code §1771.4 for categories of work subject to the payment of prevailing wages.

ARTICLE 4 DISTRICT RESPONSIBILITIES

- 4.1 Information. The District shall provide full information regarding the Project, including the District's objectives, general description of the scope, schedule requirements, construction budget, and other constraints and requirements, which may affect the Project. Except as set forth herein, the Consultant shall be entitled to rely on the accuracy and completeness of information relating to the Project provided by the District. The foregoing notwithstanding, if any information provided by the District to the Consultant consists of information relating to existing "as built" conditions of improvements on or about the Site, the Consultant shall be entitled to rely upon information in concealed or covered conditions, but the Consultant shall independently verify the accuracy and completeness of information of existing "as built" conditions which are visually apparent without opening or uncovering any existing improvements. If in such independent verification, the Consultant encounters conditions different than noted in the District provided information, the Consultant shall notify the District, and the Construction Manager in writing of such encountered discrepancies.
- 4.2 District Representative. The District shall designate a representative to act on the District's behalf with respect to the Project and who shall be authorized to render decisions on behalf of the District and to carry out the District's responsibilities under this Agreement, all of which shall be discharged or performed in a manner so as to avoid unreasonable delay in the orderly and sequential progress of design and construction of the Project and Consultant's services hereunder.
- 4.3 District Consultants. The District will furnish all legal, accounting, insurance and other consulting services as may be necessary for the Project
- 4.4 Test and Inspections. The District will furnish or otherwise retain inspection or testing services in connection with construction of an Assigned Project as required by applicable code, regulation, ordinance or the terms of the Construction Contract. The District will provide, if required by applicable code, regulation or rule or by conditions encountered, tests or inspections for hazardous or toxic materials.

- 4.5 District Notice of Non-Conformity. The District will give prompt written notice to the Consultant if the District becomes aware of any fault, failure or neglect of Consultant or the services provided by Consultant hereunder; provided that the failure or delay by District in giving such written notice shall not constitute a waiver of any right or remedy of the District arising out of such fault, failure or neglect of the Consultant. Upon receipt of such notice, a material obligation of the Consultant under this Agreement is its prompt action to fully remedy the fault, neglect or failure identified by the District in the District's written notice.

ARTICLE 5 CONTRACT PRICE

- 5.1 Contract Price for Professional Services. The Contract Price for the Professional Services subject to a Project Assignment Amendment ("PAA") will be set forth in the PAA. The Contract Price set forth in a PAA for the Professional Services described in the PAA is the full amount due from the District to the Consultant for the Professional Services described in the PAA, including the Consultant's fee, personnel expenses (including all benefits and burdens) for Consultant personnel and others providing any part of the Professional Services, travel of Consultant personnel and others performing Professional Services, costs, expense or other charges for completing Professional Services; materials, equipment and other items necessary to complete Professional Services, profit and administrative and overhead costs (including without limitation insurance) arising out of or associated with performance of Professional Services under this Agreement.
- 5.2 Additional Services. If the District authorizes Additional Professional Services for an Assigned Project, the District's payment of such Additional Professional Services will be based upon a mutually agreed upon lump sum fixed price or Time and Materials. If mutual agreement for a price is not reached, the Consultant will be compensated for Additional Services based on the time of Consultant's personnel reasonably necessary to complete the Additional Services multiplied by the applicable personnel rate set forth in Exhibit B hereto.
- 5.3 Reimbursable Expenses. There are no Reimbursable Expenses due to Consultant for completing the Professional Services for an Assigned Project, except third party laboratory testing invoices and fees due to Regulatory Entities for Document Review. No markup is allowed.
- 5.4 Consultant Billings for Payment of Contract Price. During the course of providing Professional Services, Consultant will submit monthly billing invoices to the District for payment of the Contract Price for Professional Services and any authorized Additional Professional Services completed in the immediately prior month. Consultant's billings will be in such form and format and with such substantiating materials as may be reasonably requested by the District. Consultant billings will be specifically identified for each Assigned Project.
- 5.5 District Payment of Contract Price. Within thirty (30) days of receipt of Consultant's billing invoices, District will make payment to Consultant of undisputed amounts of the Contract Price due under a PAA for Project Professional Services and authorized Additional Professional Services. The District may withhold or deduct portions of the Contract Price otherwise due Consultant under a PAA for an Assigned Project if the Consultant fails to timely and completely perform material obligations to be performed on its part under this Agreement or the PAA for the Assigned Project, with the amounts withheld or deducted being released after such failure of performance has been fully cured, less costs, damages or losses sustained by the District resulting therefrom.

- 5.6 Consultant's Payments. The Consultant will promptly pay its employees and others performing or providing Professional Services or authorized Additional Professional Services upon receipt of payments of the Contract Price from the District. If required by applicable law, rule or regulation, the Consultant's payments to personnel providing or performing Professional Services or authorized Additional Professional Services will be at least the prevailing wage rate established for the type of service provided. If prevailing wage rates apply to any personnel performing or providing Professional Services or authorized Additional Professional Services, the obligation for compliance rests solely with the Consultant without adjustment of the Contract Price for the Assigned Project.

ARTICLE 6 INSURANCE; INDEMNITY

- 6.1 Consultant Insurance. At all times during performance of Professional Services and authorized Additional Professional Services, the Consultant will maintain policies of insurance in the minimum coverage amounts set forth herein.
- 6.2 Workers' Compensation and Employers Liability Insurance. The Workers' Compensation Insurance will cover claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts may be liable. The Employer's Liability Insurance will cover bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by Consultant. The Employer's Liability Insurance may be obtained as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance policy. The minimum coverage limits of the Workers Compensation Insurance policy will be in accordance with applicable law. The foregoing notwithstanding, if Consultant is a sole proprietorship form of business entity and there are no employees of the Consultant, the foregoing requirements are inapplicable and waived for such Consultant.
- 6.3 Commercial General Liability Insurance. The Commercial General Liability and Property Insurance will cover the types of claims set forth below which may arise out of or result from services under this Agreement and for which Consultant may be legally responsible: (i) claims for damages because of bodily injury, occupational sickness or disease or death of their employees; (ii) claims for damages because of bodily injury, sickness or disease or death of any person other than their employees; (iii) claims for damages insured by usual personal injury liability coverage; (iv) claims for damages, other than to an Assigned Project, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (v) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; and (vi) contractual liability insurance applicable to obligations under this Agreement. The District will be an additional named insured to Consultant's Commercial General Liability insurance policy. The minimum coverage limits of the Commercial General Liability insurance policy will be One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate.
- 6.4 Professional Liability Insurance. Consultant's Professional Liability insurance policy will cover losses, damages and other liabilities arising out of Professional Services. The minimum coverage limits of Consultant's Professional Liability Insurance policy will be One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate.

- 6.5** Automobile Liability Insurance. The Automobile Liability Insurance policy of Consultant will cover personal injury, accident damage and personal property damage arising out of owned, leased or rented automobiles. Consultant’s Automobile Liability Insurance will be a combined single limit policy with a minimum coverage limit of at least One Million Dollars (\$1,000,000).
- 6.6** Policy Endorsements; Evidence of Insurance. The Consultant will deliver to the District Certificates of Insurance evidencing each of the policies of insurance in the coverage amounts required hereunder. All policies of insurance required hereunder will be issued by the insurer(s) admitted to issue insurance by the State of California and to the reasonable satisfaction of the District. Coverages under each policy of insurance required hereunder, whether by endorsement or otherwise, will provide that such policy will not be modified, canceled or allowed to expire without at least thirty (30) days advance written notice to the District.
- 6.7** Consultant’s Insurance Minimum Coverage Limits. Minimum coverage limits for policies of insurance to be obtained and maintained by the Consultant are:

Insurance Policy	Minimum Coverage Limit
Workers Compensation	In accordance with law
Employers Liability	Two Million Dollars (\$2,000,000)
Commercial General Liability	Per Occurrence: One Million Dollars (\$1,000,000)
	Aggregate: Two Million Dollars (\$2,000,000)
Automobile Liability	Combined Single Limit: One Million Dollars (1,000,000)
Professional Liability	Per Claim: One Million Dollars (\$1,000,000)
	Aggregate: Two Million Dollars (\$2,000,000)
Abuse and Molestation Coverage (Applies to Consultants onsite when students are present)	Per Occurrence: Two Million (\$2,000,000)
	Aggregate: Five Million Dollars (\$5,000,000)

- 6.8** District General Liability Insurance. The District will maintain General Liability Insurance covering the District for claims of bodily injury or death of persons and property damage. The District may at its sole election obtain such liability insurance from a commercially available source, a Joint Powers Authority or by self-insurance.
- 6.9** Indemnity.
- 6.9.1** Consultant Indemnity of District. To the fullest extent permitted by law, the Consultant will indemnify, defend and hold harmless the Indemnified Parties who are the District and District’s employees, officers, Board of Trustees (including each individual member of the District’s Board of Trustees), agents and

representatives from any and all claims, demands, losses, responsibilities or liabilities for: (i) injury or death of Consultant's employees; (ii) injury or death of other persons or damage to property; or (iii) other losses, damages, costs or charges arising out of or attributable, in whole or in part, to the negligent, grossly negligent or willful conduct of Consultant, its employees, agents and representatives in performing or providing any of the obligations, services or other work product contemplated under this Agreement. The foregoing will include without limitation, attorneys' fees and costs incurred by the Indemnified Parties and will survive the completion of obligations under this Agreement or termination of this Agreement until any such claim, demand, loss, responsibility or liability covered by the provisions hereof is barred by the applicable Statute of Limitations.

- 6.9.2** District Indemnity of Consultant. The District will indemnify and hold harmless Consultant from all claims arising out of bodily injury (including death) and physical damage which arise out of the negligent or willful acts, omissions or other conduct of the District.

ARTICLE 7 TERM; TIME

- 7.1** Term. The Term of this Agreement will commence as of the date set forth above. Unless earlier terminated pursuant to the terms of this Agreement, the Term will expire sixty (60) months thereafter. Notwithstanding expiration of the Term, if at expiration of the Term, there are remaining Professional Services or authorized Additional Services to be performed by the Consultant in connection with an Assigned Project under a PAA issued prior to expiration of the Term of this Agreement, the Consultant will continue to diligently perform and complete all such remaining Professional Services or authorized Additional Professional Services for the Assigned Project and the District will continue to make payment for the Professional Services and authorized Additional Professional Services for the Assigned Project in accordance with the terms of the PAA for the Assigned Project.
- 7.2** Time. Time is of the essence to this Agreement and each PAA issued hereunder. The time for performance of any obligation hereunder by either Party will be extended if performance of such obligation is delayed or prevented by conduct of the other Party, acts of God, or other unforeseeable events.

ARTICLE 8 TERMINATION; SUSPENSION

- 8.1** Termination for Default. Either the District or the Consultant may terminate this Agreement and all pending PAAs upon seven (7) days advance written notice to the other if there is a default by the other Party in its performance of a material obligation hereunder and such default in performance is not caused by the Party initiating the termination. Such termination will be deemed effective the seventh (7th) day following the date of the written termination notice, unless during such seven (7) day period, the Party receiving the written termination notice will commence to cure its default(s) and diligently thereafter prosecute such cure to completion. In addition to the District's right to terminate this Agreement and all pending PAAs pursuant to the foregoing, the District may terminate this Agreement and all pending PAAs upon written notice to Consultant if: (i) Consultant becomes bankrupt or insolvent, which will include without limitation, a general assignment for the benefit of creditors or the filing by Consultant or a third party of a petition to reorganize debts or for protection under any bankruptcy or similar law or if a trustee or receiver is appointed for Consultant or any of

Consultant's property on account of Consultant's insolvency; or (ii) if Consultant disregards applicable laws, codes, ordinances, rules or regulations. If the District exercises the right of termination hereunder, the Contract Price due the Consultant, if any, will be based upon Professional Services and authorized Additional Professional Services for Assigned Projects provided prior the effective date of the District's termination of this Agreement, reduced by the District's prior payments of the Contract Price for the Assigned Projects and losses, damages, or other costs sustained by the District arising out of the termination of this Agreement or the cause(s) for termination of this Agreement. Consultant will remain responsible and liable to District all losses, damages or other costs sustained by District arising out of termination pursuant to the foregoing or otherwise arising out of Consultant's default hereunder, to the extent that such losses, damages or other costs exceed any amount due Consultant hereunder for Professional Services or authorized Additional Professional Services.

- 8.2** District's Right to Suspend. The District may, in its discretion, suspend all or any part of the design or construction of as Assigned Project or the Professional Services for an Assigned Project; provided, however, that if the District will suspend design or construction of an Assigned Project or Professional Services for an Assigned Project for a period of sixty (60) consecutive days or more and such suspension is not caused by the Consultant's default or the acts or omissions of the Consultant, upon rescission of such suspension, the Contract Price under PAAs issued prior to the District's directive to suspend design, construction or Professional Services will be subject to adjustment to reflect actual costs and expenses incurred by Consultant, if any, as a direct result of the suspension and resumption of design or construction of the Project or Professional Services for Assigned Projects. Except as set forth herein, the Contract Price under PAAs is not subject to adjustment for any suspension of construction authorized or directed by the District.
- 8.3** District's Termination for Convenience. The District may, at any time, upon seven (7) days advance written notice to Consultant will terminate this Agreement or a PAA, in whole or in part, for the District's convenience and without fault, neglect or default on the part of Consultant. In such event, the Agreement or PAA, or such portion as designated by the District, will be deemed terminated seven (7) days after the date of the District's written notice to the Consultant or such other time as the District and Consultant may mutually agree upon. In such event, the District will make payment of the Contract Price due the Consultant pursuant to PAAs for CProfessional Services and authorized Additional Professional Services provided through the date of termination. Except as set forth above, the Consultant will not be entitled to other compensation if the District exercises the right to terminate hereunder, including without limitation anticipated profit on the unperformed portion of Professional Services.
- 8.4** Consultant Suspension of Professional Services. If the District will fail to make payment of the Contract Price undisputedly due the Consultant under a PAA, the Consultant may, upon seven (7) days advance written notice to the District, suspend further performance of Professional Services for the Assigned Project until payment in full of the undisputed portion of the Contract Price is received. In such an event, Consultant will have no liability for any delays or additional costs of construction of an Assigned Project due to, or arising out of, such suspension.
- 8.5** Consultant Obligations Upon Completion of PAAs or Termination. Upon completion of each PAA or upon termination of this Agreement or the termination hereof, Consultant will take action as directed by the District relating to the Professional Services and related work product. Unless otherwise directed by the District, the Consultant will within five (5) days of such expiration or termination assemble and deliver to the

District the Consultant's Assigned Project Records including without limitation: (i) all work product, instruments of service and other items of a tangible nature; (ii) documents, including drawings, reports and electronic files thereof; (iii) tests results, inspection notes/observations; and (iii) product samples received or prepared by or on behalf of the Consultant relating to the Assigned Project or Professional Services. The Consultant may, at its sole cost and expense, make reproductions of the foregoing Assigned Project Records delivered to the District solely for Consultant's archival purposes.

ARTICLE 9 MISCELLANEOUS

- 9.1** Governing Law; Interpretation. This Agreement will be governed and interpreted in pursuant to the laws of the State of California and in accordance with its fair meaning and not strictly for or against the District or Consultant. If any provision of this Agreement is deemed illegal, invalid unenforceable or void by any court of competent jurisdiction, such provision will be deemed stricken and deleted herefrom, but all remaining provisions will remain and continue in full force and effect.
- 9.2** Severability. If any provision of this Agreement is deemed illegal, invalid unenforceable or void by any court of competent jurisdiction, such provision shall be deemed stricken and deleted herefrom, but all remaining provisions will remain and continue in full force and effect.
- 9.3** Cumulative Rights; No Waiver. Duties and obligations imposed by this Agreement and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or failure to act by District or Consultant hereunder shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default by the other.
- 9.4** Successors; Non-Assignability. This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors of Consultant and the District. Neither Consultant nor District shall assign rights or obligations hereunder without the prior consent of the other, which consent may be withheld or granted in sole discretion of the Party requested to grant such consent.
- 9.5** Project Records. Records, documents and other materials generated or received by Consultant and its personnel in the course of performing services hereunder will be delivered to the District upon termination of this Agreement or completion of obligations under each PAA. Consultant may, at its sole cost, make copies of such records for its own files for archival purposes only. All Project Records, in any form or medium and wherever situated are property of the District.
- 9.6** Definitions.
- 9.6.1** Architect. The Architect is the person or entity retained by the District to prepare Design Documents for the Project and to provide other services in connection with design, bidding and construction of the Project. The term "Architect" includes Consultants retained by the Architect.
- 9.6.2** Contractor. The Contractor is the person or entity under contract to the District to construct the Project or portions thereof. The term "Contractor" includes Subcontractors under contract to the Contractor and if the District awards more than one Construction Contract for construction of the Project, the term "Contractor" will refer to all such Contractors.

- 9.6.3 Site. The physical area designated in the Construction Documents for Project construction and related activities.
- 9.6.4 Construction Documents. Drawings, specifications and other Instruments of Service prepared by or on behalf of the Architect for bidding and construction of the Project which are approved by DSA and permitted by DSA for construction. Construction Documents include modifications thereto authorized by the District and approved by DSA.
- 9.6.5 Construction Manager. The Construction Manager, if one is designated by the District for the Project, is an independent contractor retained by the District to assist the District in connection with design, bidding or construction of the Project. The Construction Manager is authorized to act on behalf of the District in connection with the Project as set forth herein and in the Construction Documents.
- 9.6.6 Assigned Project. An Assigned Project is a Project described in a Project Assignment issued by the District under this agreement.
- 9.6.7 Project Assignment. A Project Assignment is the written instrument issued by the District and mutually executed by the District and the Consultant which establishes the specific terms and conditions for the Consultant's performance and provision of Professional Services for an Assigned Project. The form of Project Assignment is attached as Exhibit A to the Agreement. Notwithstanding execution of the Agreement by the District and the Consultant, the Consultant shall have no right to provide Professional Services or to be compensated for any Project which may be undertaken by the District unless the District has theretofore issued a Project Assignment for such Project and the Project Assignment is mutually executed by the District and the Consultant.
- 9.7 Notices. Notices under this Agreement will be addressed and delivered as set forth as follows.

If to District:

Chief Business Official
 Santa Clara Unified School District
 1889 Lawrence Road
 Santa Clara, CA 95050

If to Consultant:

9.8 Disputes.

- 9.8.1 Consultant Continuation of Services. Except in the event of the District's failure to make an undisputed payment of the Contract Price due the Consultant, notwithstanding any disputes between District and the Consultant hereunder, the Consultant will continue to provide and perform Professional Services and authorized Additional Professional Services pending a subsequent resolution of such disputes.
- 9.8.2 Mandatory Mediation. All claims, disputes and other matters in controversy between the Consultant and the District arising out of or pertaining to this Agreement will be submitted for resolution by non-binding mediation conducted under the auspices of the JAMS and the Construction Mediation Rules of JAMS in effect at the time that a Demand for Mediation is filed. The commencement and completion of mediation proceedings pursuant to the foregoing is a condition

precedent to either the District or the Consultant commencing arbitration proceedings pursuant to the following Paragraph.

- 9.8.3** Arbitration. All claims, disputes or other matters in controversy between Consultant and District arising out of or pertaining to the Project or this Agreement which are not fully resolved through the mandatory mediation set forth above will be settled and resolved by binding arbitration conducted under the auspices of the JAMS Construction Arbitration Rules in effect at the time of the filing of a Demand for Arbitration. The award rendered by the Arbitrator(s) will be final and binding upon the District and the Consultant and will be supported by law and substantial evidence pursuant to California Code of Civil Procedure §1296. Any written arbitration award that does not include findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296 and Rule R-43 of the JAMS Construction Arbitration Rules will be invalid and unenforceable. The District and the Consultant hereby expressly agree that the Court will, subject to California Code of Civil Procedure §§1286.4 and 1296, vacate the award if, after review of the award, the Court determines either that the award is not supported by substantial evidence or that it is based on an error of law. If any claim or dispute is asserted by the Consultant, the Construction Manager if any, the Contractor, Architect or the District relating to the Project and arising in whole or in part out of this Agreement or the services provided by or through the Consultant hereunder, Consultant and District agree that any arbitration proceedings initiated between Consultant and District hereunder will be consolidated with any arbitration proceedings initiated in connection with such other claim or dispute. Any arbitration hereunder will be conducted in the JAMS Regional Office closest to the Site.
- 9.8.4** Consultant Compliance with Government Code §900, et seq. The foregoing dispute resolution procedures notwithstanding, neither the provisions of this Agreement issued hereunder, will be deemed to waive, limit or modify any requirements under Government Code §900, et seq. relating to the Consultant's submission of claims to the District. The Consultant's strict compliance with all applicable provisions of Government Code §900, et seq. in connection with any claim, dispute or other disagreement arising hereunder will be an express condition precedent to the Consultant's initiation of any other dispute resolution procedure or proceeding.
- 9.8.5** Limitation on Arbitration. Notwithstanding any other provision of this Article, the Superior Court for the State of California for the County of Santa Clara, will have sole and exclusive jurisdiction, and an arbitrator will have no authority, to hear and/or determine: (i) a challenge to the institution or maintenance of a proceeding in arbitration of a claim on the grounds that the claim is barred by the applicable statute of limitations, (ii) the claim is barred by a provision of the California Tort Claims Act, (iii) claimant has failed to satisfy any and all conditions precedent to arbitration, (iv) the right to compel arbitration has been waived by the petitioner, (v) grounds exist for the revocation of the arbitration agreement, and/or (vi) there is the prospect that a ruling in arbitration would conflict with a ruling in a pending proceeding regarding the Project on a common issue of law or fact.
- 9.9** Limitation on Special/Consequential Damages. In the event of the District's breach or default of its obligations under this Agreement or a PAA, the damages, if any, recoverable by the Consultant will be limited to general damages which are directly caused by the breach or default of the District and will exclude any and all special or

consequential damages, if any. By executing the Agreement, the Consultant expressly acknowledges the foregoing limitation to recovery of only general damages from the District if the District is in breach or default of its obligations under this Agreement; the Consultant expressly waives and relinquishes any recovery of special or consequential damages from the District.

- 9.10 Confidentiality. Unless disclosure is required by applicable law or valid court order, the Consultant shall maintain the confidentiality of all information provided by or through the District to the Consultant and shall not disclose or otherwise disseminate any information conveyed by or through the District to the Consultant relating to this Agreement or the Project.
- 9.11 Counterparts. This Agreement may be signed in counterparts and via a digital signature.
- 9.12 Entire Agreement. The foregoing constitutes the entire agreement and understanding between the District and Consultant concerning the subject matter hereof, replacing and superseding all prior agreements or negotiations, whether written or verbal. No term or condition of this Agreement will be modified or amended except by writing executed by the District and Consultant. This Agreement and the documents enumerated below, if any, are all of the documents forming a part of the Agreement.

The RFQ and the RFQ Response

IN WITNESS WHEREOF, the District and Consultant have executed this Agreement as of the date set forth above.

"District"
SANTA CLARA UNIFIED SCHOOL
DISTRICT

"Consultant"

By: _____

By: _____

Name: Mark Schiel

Name: _____

Title: Chief Business Official

Title: _____

Board Approved:

**REQUEST FOR QUALIFICATIONS (RFQ)
 Santa Clara Unified School District
 Districtwide Ongoing Professional Services for
 DTSC Compliance and/or CEQA Compliance
 RFQ #21-22-005**

**EXHIBIT A
PROJECT ASSIGNMENT AMENDMENT**

This Project Assignment Amendment ("PAA") is entered into between SANTA CLARA UNIFIED SCHOOL DISTRICT ("District") and _____ ("Consultant") as of _____ with reference to the following.

WHEREAS, the District and Consultant have entered into an agreement entitled Agreement for Districtwide Ongoing Professional Services for DTSC Compliance and/or CEQA Compliance ("Agreement") pursuant to which the Consultant agreed to provide Professional Services for the Projects assigned by the District ("Assigned Projects").

WHEREAS, the Consultant will complete the Professional Services for the following Assigned Project as set forth herein.

- 1. Assigned Project.** The Assigned Project subject to this PAA is described as:

- 2. Professional Services Scope Description.** The scope of Professional Services subject to this PAA is generally described as:

- 3. Professional Services Completion Schedule.** Consultant will complete Professional Services in accordance with the following completion schedule:

Professional Service	Completion Date

- 4. Contract Price for Professional Services.** The Contract Price for Professional Services under this PAA is:

- 5. Consultant Personnel Rates.** The following hourly rates for the Consultant's personnel completing Professional Services for the Assigned Project will be used for: (i) calculating

the Contract Price if the Contract Price is a "Not to Exceed" based on Consultant personnel time to complete Professional Services; (ii) calculating the Contract Price if the Contract Price is based on Consultant personnel time to complete Professional Services; or (iii) for calculating adjustments to the Contract Price if the District authorized Additional Professional Services for the Assigned Project.

Personnel Type	Hourly Rate
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____

6. Consultant Personnel. The Consultant designates and the District accepts the following consultant personnel for the functions/positions described herein. Consultant personnel identified below shall not be replaced by the Consultant except under the following conditions: (i) the Consultant terminates any of the identified personnel for cause; (ii) death or incapacitation of identified personnel; or (iii) any of the identified personnel voluntarily cease employment with the Consultant without duress or coercion. Consultant personnel for the Project are:

Name	Position

7. No Modification to Agreement. Except as expressly modified in the foregoing, the Agreement is not modified by this PAA. All of the foregoing described Professional Services for the Assigned Project will be completed by the Consultant in accordance with the applicable terms and requirements of the Agreement.

IN WITNESS HEREOF, the District and Consultant have executed this PAA as of the date set forth above.

"District"
SANTA CLARA UNIFIED SCHOOL DISTRICT

"Consultant"

By: _____

By: _____

Mark Schiel

Name: _____

Chief Business Official

Title: _____

Board Approved:

[END OF DOCUMENT]