

**OWNER REPRESENTATIVE**

**CONSULTANT SERVICES AGREEMENT**

This AGREEMENT is made and entered into this 24<sup>th</sup> day of March in the year 2010 between PASADENA UNIFIED SCHOOL DISTRICT, (“DISTRICT”), and \_\_\_\_\_, a California Corporation, sometimes doing business as TBD (“CONSULTANT”). The DISTRICT and the CONSULTANT are sometimes referred to herein as a “PARTY” and collectively as the “PARTIES.”

**WHEREAS**, the DISTRICT requires specialized services as an Owner Representative for Facilities Master Plan projects for (“PROJECT”); and

**WHEREAS**, the certain specialized services and advice needed for the PROJECT (“SERVICES”) are not available to the DISTRICT without cost either internally or from other public agencies; and

**WHEREAS**, CONSULTANT is specially experienced and competent to provide the SERVICES to the DISTRICT; and

**WHEREAS**, the SERVICES are not available within the DISTRICT and cannot be performed satisfactorily by DISTRICT employees, or are of such highly specialized or technical nature that the necessary knowledge, training, experience and ability are not available through the DISTRICT at this time; and

**WHEREAS**, CONSULTANT has indicated its willingness and commitment to provide the SERVICES to the DISTRICT on the terms hereafter set forth in this AGREEMENT.

**NOW, THEREFORE**, the PARTIES hereto agree as follows:

**ARTICLE I**

**SCOPE OF SERVICES TO BE PROVIDED BY CONSULTANT**

1. **SERVICES TO BE PROVIDED BY CONSULTANT.** CONSULTANT shall provide to the DISTRICT on the terms herein set forth all of the SERVICES as further articulated in **ATTACHMENT “A”** to this AGREEMENT (“CONSULTANT’s Work Plan”). The PARTIES agree that the terms of this AGREEMENT shall be controlling in the event any of the terms hereof shall be in conflict with any of the terms of the CONSULTANT’s Work Plan.

2. **PERIOD OF PERFORMANCE.** This AGREEMENT shall commence on \_\_\_\_\_ and shall terminate on \_\_\_\_\_ (“Period of Performance”). CONSULTANT shall complete all SERVICES for the PROJECT within the Period of Performance.

3. **COMPENSATION TO CONSULTANT.** DISTRICT agrees to pay CONSULTANT for the SERVICES in accordance with the rates set forth \_\_\_\_\_ No reimbursement will be made for any expenses above this Total Compensation amount.

**ARTICLE II**  
**CONSULTANT'S SERVICES AND RESPONSIBILITIES**

1. **CONSULTANT'S CERTIFICATIONS, REPRESENTATIONS AND WARRANTIES.** CONSULTANT makes the following certifications, representations, and warranties for the benefit of the DISTRICT and CONSULTANT acknowledges and agrees that the DISTRICT, in deciding to engage CONSULTANT pursuant to this AGREEMENT, is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this AGREEMENT and the course of CONSULTANT's engagement hereunder:

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

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

c. CONSULTANT, in providing the services and in otherwise carrying out its obligations to the DISTRICT under this AGREEMENT, shall not use for the personal benefit of CONSULTANT, or disclose or communicate in any manner any information that is proprietary to the DISTRICT or protected from disclosure by law, including but not limited to student records.

**ARTICLE III**  
**TERMINATION**

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

2. In the event of a termination based upon abandonment or postponement by DISTRICT, the DISTRICT shall pay to the CONSULTANT for all services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement plus any sums due the CONSULTANT for DISTRICT approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this AGREEMENT, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings and other documents whether delivered to the DISTRICT or in the possession of the CONSULTANT.

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

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

**ARTICLE IV**  
**CONSULTANT'S DRAWINGS, SPECIFICATIONS, AND REPORTS**

1. The drawings, specifications, reports, copyrightable works, ideas, discoveries, inventions, patents, products, or other information or documents (collectively, the Work Product") prepared by or developed in whole or in part by the CONSULTANT or CONSULTANT's consultants pursuant to this AGREEMENT shall be and remain the property of the DISTRICT pursuant to Education Code Section 17316.

**ARTICLE V**  
**ACCOUNTING RECORDS OF THE CONSULTANT**

1. Records of the CONSULTANT's direct personnel and expense pertaining to any extra services pursuant to this AGREEMENT and records of accounts between the DISTRICT and CONSULTANT shall be kept on a generally recognized accounting basis and shall be available to the DISTRICT or DISTRICT's authorized representative at mutually convenient times.

**ARTICLE VI**  
**ADDITIONAL CONSULTANT SERVICES**

1. CONSULTANT shall notify the DISTRICT in writing of the need for additional services required due to circumstances beyond the CONSULTANT's control. CONSULTANT shall obtain written authorization from the DISTRICT before rendering such services. The DISTRICT may require CONSULTANT to perform additional services which are, in the DISTRICT's discretion, necessary. Compensation for such services shall be negotiated and approved in writing by the DISTRICT. Such services may include:

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

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

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

**ARTICLE VII**  
**INDEMNITY AND INSURANCE**

1. **INDEMNITY.** To the fullest extent permitted by law, CONSULTANT agrees to indemnify, reimburse for the cost of defense and hold DISTRICT entirely harmless from all liability arising out of:

a. **Worker Compensation and Employer Liability:** Any and all claims under Workers' Compensation acts and other employee benefit acts with respect to CONSULTANT's employees or CONSULTANT's subcontractor's employees arising out of CONSULTANT's work under this AGREEMENT; and

b. **General Liability:** Liability for damages for (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of law or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by the CONSULTANT or the DISTRICT, or any person, firm or corporation employed by the CONSULTANT, either directly or by independent contract, upon or in connection with the PROJECT, except for liability resulting from the negligence, or willful misconduct of the DISTRICT, its officers, employees, agents or independent consultants who are directly employed by the DISTRICT;

c. **Professional Liability:** Any loss, injury to, or death of, persons or damage to property arising out of, pertaining to, or relating to any default, error, omission, negligent or wrongful act of the CONSULTANT, or any person, firm or corporation employed by the CONSULTANT, either directly or by independent contract, , sustained by any person, firm or corporation including the DISTRICT, arising out of, or in any way connected with the PROJECT, including liability for damages that occur on or off DISTRICT property; but not for damages that result from the negligence, or willful misconduct of the DISTRICT.

If arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CONSULTANT, the CONSULTANT, at CONSULTANT's own expense, cost, and risk, shall reimburse for the cost of defense 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, 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.

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

a. The CONSULTANT shall carry Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California.

b. Comprehensive general insurance with limits of not less than Two Million Dollars (\$2,000,000) and auto liability insurance with limits of not less than One Million Dollars (\$1,000,000) combined single limit respectively, bodily injury and property damage liability per occurrence, including:

- (1) Owned, non-owned and hired vehicles at cash value;
- (2) Blanket contractual;
- (3) Broad form property damage;
- (4) Products/completed operations; and
- (5) Personal and Advertising Injury.

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

d. Each policy of insurance required in (b) above shall by separate endorsement name DISTRICT and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of CONSULTANT hereunder, such policy is primary and any insurance carried by DISTRICT is excess and non-contributory 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. CONSULTANT shall notify DISTRICT in the event of failure to renew, each policy. Prior to commencing work, CONSULTANT shall deliver to DISTRICT certificates of insurance as evidence of compliance with the requirements herein. In the event CONSULTANT fails to secure or maintain any policy of insurance required hereby, DISTRICT may, at its sole discretion, secure such policy of insurance in the name of and for the account of CONSULTANT, and in such event CONSULTANT shall reimburse DISTRICT upon demand for the cost thereof.

## **ARTICLE VIII** **MISCELLANEOUS**

1. **LEGAL STATUS.** CONSULTANT, in the performance of this AGREEMENT, shall be and act as an independent contractor. CONSULTANT understands and agrees that CONSULTANT and all of CONSULTANT's employees shall not be considered officers, employees or agents of the DISTRICT, and are not entitled to benefits of any kind or nature normally provided employees of the DISTRICT and/or to which DISTRICT's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONSULTANT assumes the full responsibility for the acts and/or omissions of CONSULTANT's employees or agents as they relate to the services to be provided under this AGREEMENT. CONSULTANT shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective CONSULTANT's employees.

2. **NOTICE.** All notices required to be delivered under this AGREEMENT to the other PARTY must be in writing and shall be effective (i) when personally delivered by the other PARTY or messenger or courier thereof; (ii) three (3) business days after deposit in the United States mail, registered or certified; (iii) twenty-four (24) hours after deposit before the daily deadline time with a reputable overnight courier or service; or (iv) upon receipt of a telecopy or fax transmission, provided

TO THE DISTRICT:

PASADENA UNIFIED SCHOOL DISTRICT  
740 West Woodbury  
Pasadena, CA 91103  
Phone: (626) 396-3604  
Attention: Stephen L. Brinkman

TO CONSULTANT:

3. FINGERPRINTING REQUIREMENTS. Education Code Section 45125.1 states that if employees of any consultant providing services at a school site might have any contact with any under age pupils (younger than 18 years of age); those employees shall be fingerprinted by the Department of Justice (DOJ) before entering to determine that they have not been convicted of a serious or violent felony. If the DISTRICT determines that more than limited contact with students will occur during the performance of these SERVICES by CONSULTANT, CONSULTANT will not perform SERVICES until all employees providing SERVICES have been fingerprinted by the DOJ and DOJ fingerprinting clearance certification has been provided to DISTRICT.

4. CONFLICTS OF INTEREST. No director, officer, official, representative, agent or employee of the CONSULTANT shall have any financial interest, direct or indirect, in this Agreement.

5. PROVISIONS REQUIRED BY LAW DEEMED INSERTED. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either PARTY the Agreement shall forthwith be physically amended to make such insertion or correction.

6. 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 CONSULTANT.

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

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

9. This AGREEMENT represents the entire AGREEMENT between the DISTRICT and CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or

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

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

12. In interpreting this AGREEMENT, it shall be deemed to have been prepared by the PARTIES jointly, and no ambiguity shall be resolved against the DISTRICT on the premise that it or its attorneys were responsible for drafting this AGREEMENT or any provision hereof. The captions or headings set forth in this AGREEMENT are for convenience only and in no way define, limit, or describe the scope or intent of any Sections or other provisions of this AGREEMENT. Any reference in this AGREEMENT to a Section, unless specified otherwise, shall be a reference to a Section of this AGREEMENT.

13. Each PARTY warrants that the individuals who have signed this AGREEMENT have the legal power, right, and authority to make this AGREEMENT and bind each respective PARTY.

14. If any portion of this AGREEMENT shall be held to be invalid or unenforceable for any reason, the remaining provisions shall remain valid and enforceable. If the court finds that any provision in this AGREEMENT is invalid or unenforceable, but that by limiting such provisions would become valid and enforceable, then such provision(s) should be deemed to be written, construed and enforced as so limited.

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

CONSULTANT:

DISTRICT:

Pasadena Unified School District

By: \_\_\_\_\_

By: \_\_\_\_\_

Stephen L. Brinkman  
Chief, Facilities

APPROVED AS TO FORM:

Atkinson, Andelson, Loya, Ruud & Romo

\_\_\_\_\_  
Terry T. Tao, Esq.  
Attorneys for Pasadena Unified School District

## **Attachment A**

The Owner Representative will be expected to support construction activities in a public works environment including project oversight as liaison for the District to District Staff, architects, construction service providers, construction firms, representatives of the Division of State Architect, California Department of Education, Office of Public School Construction, representatives of the three communities served by the District, the County of Los Angeles, other regional agencies, the Board of Education, and members of the public. The successful candidate will be expected to manage all parts of the construction process including the preparation of construction documents, specifically front end documents, specifications, bid packages, bid advertisements, develop project estimates, budgets and timelines, provide assistance with project design development, track costs, participate in value engineering reviews and constructability reviews, conduct bid walks and bid openings, perform project management, complete project punch lists and supervise process leading to project completion and be responsible for project closeout. This individual will also assist in the application for funds from all sources and will support the information process required by those agencies involved in public works funding and/or regulation.

The scope of services set forth in this section represents an outline of the services which the District anticipates the successful individual to perform. The precise scope of services will be directed by the Chief, Facilities on an ongoing basis. The individual may suggest changes to the scope of services in order to achieve the District's objectives.