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Introduction Date	4-14-2021
Enactment Number	21-0578
Enactment Date	4/14/2021 lf



Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Tadashi Nakadegawa, Deputy Chief, Facilities Planning and Management

Board Meeting Date April 14, 2021

Subject Measure Y Program Management Services Agreement – Brailsford & Dunlavey - Division of Facilities Planning and Management

Action Requested Approval by the Board of Education of Measure Y Program Management Service Agreement between the District and Brailsford & Dunlavey, Oakland, California, for the latter to provide planning, coordination and program management services through the completion of the District’s Measure J and commencement of Measure Y Bond Programs for the Program Management Facilities Planning & Management Project, in the not to exceed amount of \$6,274,154.00, as the selected consultant, with work schedule to commence on April 15, 2021, and scheduled to last until June 30, 2023, pursuant to the Agreement.

Discussion Consultant will provide Program Management Services for the District. Consultant was selected through the use of a fair, competitive RFP process based on their demonstrated competence and professional qualifications. (Government Code §4526)

LBP (Local Business Participation Percentage) 50.4%

Recommendation Approval by the Board of Education of Measure Y Program Management Service Agreement between the District and Brailsford & Dunlavey, Oakland, California, for the latter to provide planning, coordination and program management services through the completion of the District’s Measure J and commencement of Measure Y Bond Programs for the Program Management Facilities Planning & Management Project, in the not to exceed amount of \$6,274,154.00, as the selected consultant, with work schedule to commence on April 15, 2021, and scheduled to last until June 30, 2023, pursuant to the Agreement.

Fiscal Impact Fund 21 Measure J

Attachments

- Agreement
- Proposal & Fee schedule
- Insurance Certificate



CONTRACT JUSTIFICATION FORM

This Form Shall Be Submitted to the Board Office With Every
Agenda Contract.

Legislative File ID No. 21-0195

Department: Facilities Planning & Management

Vendor Name: Brailsford & Dunlavey

Project Name: Program Management Services

Project No.: 00918

Contract Term: Intended Start: April 15, 2021

Intended End: June 30, 2023

Amended End: _____

Annual (if annual contract) or Total (if multi-year agreement) Cost: \$6,274,154.00

Approved by: Tadashi Nakadegawa

Is Vendor a local Oakland Business or have they meet the requirements of the

Local Business Policy? ☒ Yes (No if Unchecked)

How was this contractor or vendor selected?

Brailsford & Dunlavey was selected through an RFP process that was issued on November 18, 2020. Brailsford & Dunlavey received the highest score and evaluation given by the District.

Summarize the services or supplies this contractor or vendor will be providing.

Brailsford & Dunlavey will provide planning, coordination and program management services through the completion of the District's Measure J and commencement of Measure Y Bond Programs. Services may include any or all of the following: planning, coordination, and program management; and District staff augmentation for program management services.

Was this contract competitively bid? ☐ Check box for "Yes" (If "No," leave box unchecked)

If "No," please answer the following questions:

1) How did you determine the price is competitive?

RFP process includes review/scoring of proposals submitted. The District received proposals and interviewed other vendors. Brailsford & Dunlavey's price was fair and reasonable compared to the prices submitted by the other responding consultants.

2) Please check the competitive bidding exception relied upon:

Construction Contract:

- ☐ Price is at or under UPCCAA threshold of \$60,000 (as of 1/1/19)
- ☐ CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- ☐ Emergency contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- ☐ No advantage to bidding – *contact legal counsel to discuss if applicable*
- ☐ Sole source contractor – *contact legal counsel to discuss if applicable*
- ☐ Completion contract – *contact legal counsel to discuss if applicable*
- ☐ Lease-leaseback contract RFP process – *contact legal counsel to discuss if applicable*
- ☐ Design-build contract RFP process – *contact legal counsel to discuss if applicable*
- ☐ Energy service contract – *contact legal counsel to discuss if applicable*
- ☐ Other: _____ – *contact legal counsel to discuss if applicable*

Consultant Contract:

- ☒ Construction project manager, land surveyor, or environmental services – selected based on demonstrated competence and professional qualifications (Government Code §4526)
- ☐ Architect or engineer – use of a fair, competitive RFP selection process (Government Code §§4529.10 et seq.)
- ☐ Architect or engineer when state funds being used – use of competitive process consistent with Government Code §§4526-4528 (Education Code §17070.50)
- ☐ Other professional or specially trained services or advice – no bidding or RFP required (Public Contract Code §20111(d) and Government Code §53060) – *contact legal counsel to discuss if applicable*
- ☐ For services other than above, the cost of services is \$96,700 or less (as of 1/1/21)
- ☐ No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*

Purchasing Contract:

- ☐ Price is at or under bid threshold of \$96,700 (as of 1/1/21)

- ☐ Certain instructional materials (Public Contract Code §20118.3)
- ☐ Data processing systems and supporting software – choose one of three lowest bidders (Public Contract Code §20118.1)
- ☐ Electronic equipment – competitive negotiation (Public Contract Code §20118.2) – *contact legal counsel to discuss if applicable*
- ☐ CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- ☐ Piggyback contract for purchase of personal property (Public Contract Code §20118) – *contact legal counsel to discuss if applicable*
- ☐ Supplies for emergency construction contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- ☐ No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*
- ☐ Other: _____

Maintenance Contract:

- ☐ Price is at or under bid threshold of \$96,700 (as of 1/1/21)
- ☐ No advantage to bidding (including sole source) – *contact legal counsel to discuss*
- ☐ Other: _____

3) Explain in detail the facts that support the applicability of the exception marked above:

- Vendor was selected through a competitive RFP process based on their professional qualifications to service the District in specified work. The District reviewed the vendor’s qualifications and chose the vendor based on its quality of work on other projects and is qualified to perform the requested services.



Department of Facilities Planning and Management

MEMORANDUM

Date: February 2, 2021
To: Juanita Hunter
From: Philip Lang, LBU Consultant
Subject: LBU Review
Program Management Services #00918

As required by the OUSD LBU Policy requirements, a review of the City of Oakland's database of certified firms was conducted to identify potential firms certified for this project.

SUMMARY:

The LBU Compliance Team has conducted a review of the Local Business Participation Worksheet for the Program Management Services RFP/Q submitted by Brailsford & Dunlavey

- Brailsford & Dunlavey achieved 50% LBU (10.2% LBE and 40% SLBE/SLRBE)

RECOMMENDATION:

Based on the LBU Participation Worksheets, the Compliance Team finds Brailsford & Dunlavey to be responsive and eligible for contract award.

Cc: Kenya Chapman

Local Business Utilization Program Consultants



LOCAL BUSINESS PARTICIPATION WORKSHEET

2/01/21

PRIME: Brailsford & Dunlavey

Project: Program Management

Project #: 00918

Estimate:

Base Bid Dollar Amount	0.0%	Note: Please complete dollar amounts for sub/prime work; local business percentages; base bid			
	Total Dollar Amount of Work	LBE %	SLB%	SLBR%	City of Oakland Certification No.
PRIME Company: Address: 1 Sutter Street, Suite 940 City/State: San Francisco, CA Phone:	\$ 1,963,143				
Company: Saylor Address: 1777 Oakland Rd, Suite 103 City/State: Walnut Creek, CA Phone: 415-291-3200	\$ 180,416				
Company: Colland Jang Associates Address: 211 10th Street, Suite 328 City/State: Oakland, CA Phone:	\$ 2,500,064		40.3%		3426
Company: Dabri Address: 1904 Franklin Streed City/State: Oakland, CA Phone: 510-406-7159	\$ 631,459	10.2%			7267
Company:	\$				
TOTAL PARTICIPATION	\$6,209,954.00	10.2%	40.3%	0.0%	50.4%

APPROVAL- LBU Compliance Officer

Note: Local Business Participation documentation must be submitted within 24 hours of bid opening

OAKLAND UNIFIED SCHOOL DISTRICT MEASURE Y PROGRAM MANAGEMENT SERVICES AGREEMENT

This Measure Y Program Management Services Agreement (“Agreement”) is made and entered into effective April 15, 2021 (the “Effective Date”), by and between the Oakland Unified School District (“District”) and **Brailsford & Dunlavey** (“Contractor”).

1. **Contractor Services.** Contractor agrees to provide to District the services (“Services”) which includes to perform the planning, coordination and program management services through the completion of the District’s Measure J and commencement of Measure Y Bond Programs. Services may include any or all of the following: planning, coordination, and program management, as described in the Request for Qualifications/Proposal for Program Management Services for the Measure Y Bond Program, dated November 18, 2020 (“RFQP”; see attached as **Exhibit A**), and District staff augmentation for program management services.

2. **Contractor Qualifications.** Contractor represents and warrants to District that Contractor, and all of Contractor’s employees, agents or volunteers (the “Contractor Parties”), have in effect and shall maintain in full force throughout the Term of this Agreement all licenses, credentials, permits and any other qualifications required by law to perform the Services and to fully and faithfully satisfy all of the terms set forth in this Agreement. Contractor and any Contractor Parties performing services shall be competent to perform those services.

3. **Term.** This Agreement shall begin on April 15, 2021, and shall terminate upon completion of the Services, but no later than June 30, 2023 (“Term”), except as otherwise stated in **Paragraph 4** below. There shall be no extension of the Term of this Agreement without the express written consent of all parties. Written notice by the District Superintendent or designee shall be sufficient to stop further performance of the Services by Contractor or the Contractor Parties. In the event of early termination, Contractor shall be paid for satisfactory Services performed to the date of termination. Upon payment by District, District shall be under no further obligation to Contractor, monetarily or otherwise, and District may proceed with the work in any manner District deems proper.

4. **Termination.** Either party may terminate this Agreement at any time by giving thirty (30) days advance written notice to the other party, however the parties may agree in writing to a shorter notice period. Notwithstanding the foregoing, District may terminate this Agreement at any time by giving written notice to Contractor if Contractor materially breaches any of the terms of this Agreement, any act or omission of Contractor or the Contractor Parties exposes District to potential liability or may cause an increase in District’s insurance premiums, Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed because of Contractor’s insolvency. Such termination shall be effective immediately upon Contractor’s receipt of the notice.

5. **Payment of Fees For Services.** District agrees to pay Contractor fees at the hourly rates listed in **Exhibit B** to this Agreement. Contractor may not increase its rates over the course of this Agreement by more than 4% per year. Total fees paid by District to Contractor for Services under the Agreement shall not exceed **\$6,274,154.00** for the services required by the Agreement (see Section 1 above.) Contractor shall perform all Services required by the Agreement even if the fee has already been paid

Measure Y Program Management Services Agreement – Brailsford & Dunlavey – Facilities Planning & Management
Project - \$6.274,154.00 Million

and no more payments will be forthcoming. District agrees to pay the fee, up to the maximum amount provided herein, within sixty (60) days of receipt of a detailed invoice from Contractor, including any additional supporting documentation District reasonably requests. The **\$6,274,154.00** fee is based on Contractor's matrix of anticipated costs attached as ***Exhibit B*** to this Agreement.

5.1. **Reimbursement for Certain Expenses.** District shall reimburse Contractor for Reimbursable Expenses (defined below). Contractor's total reimbursement for Reimbursable Expenses shall not exceed \$64,200, which is Contractor's estimate of the maximum total cost of Reimbursable Expenses for performance of the Services. Any expenses incurred by Contractor in excess of the Reimbursable Expenses amount set forth above shall not be compensated. District agrees to pay Reimbursable Expenses, up to the maximum amount provided herein, within sixty (60) days of receipt of a detailed invoice from Contractor, including any additional supporting documentation District reasonably requests. "Reimbursable Expenses" means Contractor's actual out-of-pocket expenses, without markup, incurred in performance of the Services, including fax, reproduction expense (excluding expense for reproduction for Contractor's office use), postage, messenger, transportation, living expenses in connection with out-of-town travel, and long distance communications. Reimbursable Expenses do not include indirect costs, such as general overhead (for example, home office overhead, including technology hardware and software, or insurance premiums); nor do they include expenses incurred in connection with services that result from Contractor's wrongful acts or omissions.

6. **Indemnity.** Contractor shall defend, indemnify, and hold harmless District and its agents, representatives, officers, consultants, employees, Board of Trustees, members of the Board of Trustees (collectively, the "District Parties"), from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to attorney fees and costs including fees of consultants) of any kind, nature and description (collectively, the "Claims") directly or indirectly arising out of, connected with, or resulting from any act, error, omission, negligence, or willful misconduct of Contractor, the Contractor Parties or their respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees in the performance of or failure to perform Contractor's obligations under this Agreement, including, but not limited to Contractor's or the Contractor Parties' use of the site, Contractor's or the Contractor Parties' performance of the Services, Contractor's or the Contractor Parties' breach of any of the representations or warranties contained in this Agreement, or for injury to or death of persons or damage to property or delay or damage to the District or the District Parties. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph.

7. **Equipment and Materials.** Contractor at its sole cost and expense shall provide and furnish all tools, labor, materials, equipment, transportation services and any other items (collectively, "Equipment") which are required or necessary to perform the Services in a manner which is consistent with generally accepted standards of the profession for similar services. Notwithstanding the foregoing, District shall not be responsible for any damages to persons or property as a result of the use, misuse or failure of any Equipment used by Contractor or the Contractor Parties, even if such Equipment is furnished, rented or loaned to Contractor or the Contractor Parties by District. Furthermore, District may reject any Equipment or workmanship that does not conform to the requirements of this Agreement and Contractor must then promptly remedy or replace it at no additional cost to District and subject to

District's reasonable satisfaction.

8. **Insurance.** Without in any way limiting Contractor's liability, or indemnification obligations set forth in Paragraph 6 above, Contractor shall secure and maintain throughout the Term of this Agreement the following insurance: (i) comprehensive general liability insurance with limits of not less than \$2,000,000 each occurrence and \$4,000,000 in the aggregate; (ii) commercial automobile liability insurance with limits not less than \$2,000,000 each occurrence and \$4,000,000 in the aggregate, if applicable; and (iii) worker's compensation insurance as required by Labor Code section 3200, *et seq.*, if applicable. Neither Contractor nor any of the Contractor Parties shall commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverages have been delivered to and approved by District. All insurance policies shall include an endorsement stating that District and District Parties are named additional insureds. All of the policies shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to District. If such a notice is not given or even if District receives a notice, District may, at its sole option, terminate this Agreement. All insurance policies shall include an endorsement stating that it is primary to any insurance or self-insurance maintained by District and shall waive all rights of subrogation against District and/or the District Parties. A copy of the declarations page of Contractor's insurance policies shall be attached to this Agreement as proof of insurance.

9. **Independent Contractor Status.** Contractor is engaged in an independently established trade, occupation, or business to provide the Services required by this Agreement and is hereby retained to provide specialized services for District that are outside the usual course of District's business. Contractor is free from the control and direction of District in connection with the manner in which it provides the Services to District. Contractor understands and agrees that Contractor and the Contractor Parties shall not be considered officers, employees, agents, partners, or joint venturers of District, and are not entitled to benefits of any kind or nature normally provided to employees of District and/or to which District's employees are normally entitled.

10. **Taxes.** All payments made by District to Contractor pursuant to this Agreement shall be reported to the applicable federal and state taxing authorities as required. District will not withhold any money from fees payable to Contractor, including FICA (social security), state or federal unemployment insurance contributions, or state or federal income tax or disability insurance. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor and the Contractor Parties and otherwise in connection with this Agreement.

11. **Fingerprinting/Criminal Background Investigation Certification.** Contractor and the Contractor Parties shall at all times comply with the fingerprinting and criminal background investigation requirements of the California Education Code ("Education Code") section 45125.1, and shall complete the Fingerprinting Notice and Acknowledgement Form and Student Contract Form.

12. **Tuberculosis Certification.** Contractor and the Contractor Parties shall at all times comply with the tuberculosis ("TB") certification requirements of Education Code section 49406. Accordingly, by checking the applicable boxes below, Contractor hereby represents and warrants to District the

following:

A. **X** Contractor and Contractor Parties shall **only have limited or no contact** (as determined by District) with District students at all times during the Term of this Agreement.

B. ☐ The following Contractor and Contractor Parties shall have **more than limited contact** (as determined by District) with District students during the Term of this Agreement and, at no cost to District, have received a TB test in full compliance with the requirements of Education Code section 49406:

_____. [Attach and sign additional pages, as needed.]

Contractor shall maintain on file the certificates showing that the Contractor and Contractor Parties were examined and found free from active TB. These forms shall be regularly maintained and updated by Contractor and shall be available to District upon request or audit.

Contractor further agrees and acknowledges that all new personnel hired after the Effective Date of this Agreement by Contractor and Contractor Parties are subject to the TB certification requirements and shall be prohibited from having any contact with District students until the TB certification requirements have been satisfied and District determines whether any contact is permissible.

13. **Confidential Information.** Contractor shall maintain the confidentiality of, and protect from unauthorized disclosure, any and all individual student information received from the District, including but not limited to student names and other identifying information. Contractor shall not use such student information for any purpose other than carrying out the obligations under this Agreement. Upon termination of this Agreement, Contractor shall turn over to District all educational records related to the services provided to any District student pursuant to this Agreement.

14. **Assignment/Successors and Assigns.** Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of District. Subject to the foregoing, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

15. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

16. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by both parties and approved by the governing board.

17. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its choice of law rules. Any action or proceeding seeking any relief

under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Alameda, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

18. **Written Notice.** Written notice shall be deemed to have been duly served if delivered in person to Contractor at the address located next to the party signatures below, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who sends the notice.

19. **Compliance with Law.** Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. Contractor shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances, including but not limited to fingerprinting under Education Code section 45125.1, confidentiality of records, Education Code section 49406 and others. Contractor agrees that it shall comply with all legal requirements for the performance of duties under this Agreement and that failure to do so shall constitute material breach.

20. **Non-Discrimination.** There shall be no unlawful discrimination in the contracting of persons under this Agreement because of race, color, national origin, age, ancestry, religion, sex, or sexual orientation of such persons.

21. **Attorneys' Fees.** If any legal action is taken to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other reasonable costs and expenses incurred in connection with that legal action.

22. **Liability of District.** Notwithstanding anything stated herein to the contrary, District shall not be liable for any special, consequential, indirect or incidental damages, including but not limited to lost profits in connection with this Agreement.

23. **Time.** Time is of the essence to this Agreement.

24. **Waiver.** No delay or omission by District in exercising any right under this Agreement shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude the District from any or further exercise of any right or remedy.

25. **Entire Agreement.** This Agreement is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms.

26. **Ambiguity.** The parties to this Agreement, and each of them, hereby represent that the language contained herein is to be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all parties shall be treated as equally responsible for such ambiguity.

27. **Execution of Other Documents.** The parties to this Agreement shall cooperate fully in the

execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

28. **Execution in Counterparts.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, facsimile, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

29. **Warranty of Authority.** The persons who have signed this Agreement warrant that they are legally authorized to do so on behalf of the respective parties, and by their signatures to bind the respective parties to this Agreement.

30. **Local Business.** Contractor shall comply with the requirements of the District’s Local, Small Local, and Small Local Resident Business Enterprise Program, which may require a 50% minimum local participation requirement in the performance of this Agreement. A copy of this program may be obtained at www.ousd.k12.ca.us, under the Facilities Planning & Management Department drop down menu, at “Bids and Requests for Proposals.”

31. **Forms.** The following forms, attached to the proposal, are incorporated into the contract:

- Roof project certification (if required; see Public Contract Code §3006).
- Fingerprinting Notice and Acknowledgement.
- Iran Contracting Act Certification.
- Workers’ Compensation Certification.
- Drug-Free Workplace Certification.
- Buy American Certification.
- Local Business Participation Form.

Within ten (10) days after award and before commencement of the services, the signed agreement, insurance documentation, and Student Contract Form (see Exhibit B to the Fingerprinting Notice and Acknowledgement) shall be submitted to the District.

32. **Mediation.** A party to this Agreement shall, as a condition precedent to initiating any litigation against the other party, demand mediation of any dispute. The parties shall endeavor to include any third party claimant in the mediation. The parties shall select a mediator and schedule the mediation within thirty (30) days of the initial demand for mediation. If the parties cannot agree on a mediator, the mediator shall be appointed by JAMS. The parties to the mediation, including the parties to this Agreement, shall pay equal shares of the mediator’s fees. Each party shall bear its own attorney’s fees related to the mediation.

* * * * *

DISTRICT:**OAKLAND UNIFIED SCHOOL DISTRICT**




Shanthi Gonzales
President, Board of Education
Date

4/15/2021



Kyla Johnson-Trammell, Superintendent
Secretary, Board of Education
Date

4/15/2021



Tadashi Nakadegawa,
Deputy Chief, Facilities Planning & Management
Date

2/11/2021

Approved As To Form:



Lozano Smith
OUSD Facilities Legal Counsel
Date

2/11/21

CONTRACTOR:**Brailsford & Dunlavey**



Signature
Date

February 9, 2021

Christopher S. Dunlavey, FAIA President

Name & Title

EXHIBIT A

Request for Qualifications/Proposals

**OAKLAND UNIFIED SCHOOL DISTRICT
FACILITIES, PLANNING AND MANAGEMENT
955 High Street
Oakland, CA 94601**

**REQUEST FOR QUALIFICATIONS/PROPOSALS
PROGRAM MANAGEMENT SERVICES
OAKLAND UNIFIED SCHOOL DISTRICT
MEASURE Y BOND PROGRAM**

NOVEMBER 18, 2020 (ISSUED)

Key Dates:	
<ul style="list-style-type: none">• Final date to request invite for non-mandatory pre-submittal virtual (Zoom) meeting: November 30, 2020.	
<ul style="list-style-type: none">• Non-mandatory pre-submittal virtual ("Zoom") meeting 10:00 a.m. on December 2, 2020.	
<ul style="list-style-type: none">• Final Date to submit Letter of Interest and for submission of written questions: December 9, 2020.	
<ul style="list-style-type: none">• District to respond to written questions: December 16, 2020.	
<ul style="list-style-type: none">• Statement of Qualifications/Proposal Submittals: due by 2:00 p.m. on December 23, 2020.	
<ul style="list-style-type: none">• Finalists notified: December 30, 2020.	
<ul style="list-style-type: none">• Finalists to submit detailed confidential Fee Proposal: January 4, 2021.	
<ul style="list-style-type: none">• Interviews: January 6-7, 2021 (tentative)	
<ul style="list-style-type: none">• Final determination/recommendation for award: January 13, 2021	
<ul style="list-style-type: none">• Contract approval by OUSD Board of Education: February 24, 2021	

The Oakland Unified School District ("District") is requesting qualified persons, firms, partnerships, corporations, associations, or professional organizations to perform the planning, coordination and program management services through the completion of the District's Measure J and commencement of Measure Y Bond Programs. Services may include any or all of the following: planning, coordination, and program management; and; District staff augmentation for program management services. Responders submitting proposals shall identify the precise experience level with capital program management. This contract is for February 2021 to June 30, 2023, with option for up to 3 one year renewals.

The District educates approximately 36,000 students at eighty-three (83) school sites located in the City of Oakland; in addition there are 13,300 students in Oakland public charter schools with 33 charter schools in District authorized facilities. Voters within the District have overwhelmingly supported the modernization and reconstruction of the District's schools. The District is about to

commence the capital program as a part of the Measure Y Bond ("Measure Y Program") passed in November 2020 and has ongoing need for assistance with the planning, pre-design, design and construction phases of work on major renovation/reconstruction of its elementary and secondary schools. Attached to this Request for Qualifications/Proposals ("RFQ/P") is the District's List of Bond Projects as reflected in the approved bond measure that highlights the scopes and estimated costs of Measure Y Program projects. Due to the timing and complexity of the projects slated to start construction in 2021, responder's experience and proficiency in major capital program transition planning is critical.

Responders should also take cognizance that District Projects are constructed using Design-Bid-Build, Lease Leaseback and Design Build delivery methods as well as traditional design, bid, build. During the initial stages of preparing for a capital construction project, District Program/Construction Management consultants and facilities staff consider factors to determine which method of project delivery will best match the District's overall construction objectives, including: Project size; Project duration; Staff capacity and specific construction experience; ability to meet the District's mandatory local business objectives; available funding sources, and; a construction method's influence on project planning, design and phasing. Responder's experience with each delivery method is expected.

Respondents to this RFP should mail or deliver five (5) bound copies, one (1) unbound wet-signed original and one (1) PDF version on a flash drive of their Proposal, as further described herein, to:

Oakland Unified School District
Attn: Tadashi Nakadegawa, Acting Deputy Chief
955 High Street, Oakland, CA 94601

**ALL RESPONSES ARE DUE BY 2:00 PM, ON DECEMBER 23, 2020.
(FAX RESPONSES WILL NOT BE ACCEPTED)**

Due to the circumstances caused by the Covid-19 pandemic, the District will accept electronic Proposals sent via email in lieu of hard copies. Proposals received by the District no later than 2:00 PM (Pacific Standard Time) on December 23, 2020 via email will be accepted.

The District will conduct a virtual ("Zoom") non-mandatory informational meeting regarding this RFP **at 10:00 a.m. on December 2, 2020**. Interested parties shall request an invite no later than November 30, 2020 to participate in this virtual meeting.

All questions regarding this RFQ/P and requests for clarification must also be submitted via email by December 9, 2020 to Tadashi Nakadegawa (tadashi.nakadegawa@ousd.org) and cc: to Kenya Chatman (kenya.chatman@ousd.org) and David Colbert (david.colbert2@ousd.org).

All proposals must be preceded by an email by the December 9, 2020 deadline to these same addressees notifying the District of your interest (i.e., Letter of Interest) in presenting a proposal including the contact name, email, phone, and address of the firm or team contact.

This is neither a formal request for bids, nor an offer by the District to contract with any party responding to this request. The District reserves the right to reject any and all proposals.

Thank you for your interest in working with the Oakland Unified School District.

Sincerely,

Tadashi Nakadegawa, Acting Deputy Chief

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

INSTRUCTIONS FOR SUBMITTING PROPOSALS

1. GENERAL

The District intends to select a firm that best meet the District's needs to perform the planning, program management as described in this Request for Qualifications/Proposals. The District may assign all or parts of the work described below to one or more of the successful firm(s). The criteria on which the District makes its determination will not be limited to the amount of proposed fees, but will also be based on ability and experience as described herein. Each firm submitting a proposal must submit a budget for each phase and break out the cost for each phase as well as an overall cost if the firm is given all phases of work.

The firm(s) selected as a result of this process ("Program Manager") shall be responsible for the following general categories of work:

Master Planning:

Responsibilities will include in depth review of most recent, current, and upcoming Facilities Master Plans with a focus on verification and updating the cost estimates; providing feedback on appropriate scope, advise the District on phasing, grouping of projects, and strategies for cost-savings.

Program Management:

Work with the District on overall scheduling, budgets, and communication for all capital program projects; report to the District on program and individual project status on a regular basis.

Supervision of Construction Management:

Coordinate all work with the District and ongoing efforts of the Construction Management Consultant(s) to verify: Provision of design phase services in conjunction with all architecture firms awarded work by the District; assist with bidding; manage the construction contracts; and close out the projects. The District may utilize lease-leaseback or design-build delivery in lieu of low bidding based on design-bid-build on these projects.

Program Management and Construction Management Software:

The Facilities Department is currently transitioning its program and construction program software to COLBIDocs with Account-Ability by Colbi Technologies, Inc. It is essential the selected firm becomes fully acclimated to ensure its smooth transition and completely versed in managing all projects through their entire life cycle.

Local Business Program:

Provide strategies to best balance our robust local business policy with cost and schedule efficient project delivery. Coordinate these strategies with the District and our ongoing local business consultant in delivery of their responsibilities including: resource development, implementation, oversight, enforcement and business support services to the District's Local/Small Local/ Small Local Resident Business Program (S/SL/SLRBE).

Coordination with District Facilities Staff:

Coordination with current District facilities staff, including provision of staff augmentation for program management services.

The District adheres to the Collaborative for High Performance Schools (CHPS) Best Practices standards. The Scope of Services provided by the Program Manager shall adhere to the CHPS criteria and best practices, to the extent feasible.

The District may contract immediately, or during the length of the Measure Y Bond Program term with firm(s) to provide all of the services described herein, but it may elect to divide the scope of work into phases as follows:

1. Program Management for all sites;
2. Selected services within or across various projects.

2. RESPONSIBILITIES OF PROGRAM MANAGER

2.1 CAPITAL PROGRAM MANAGEMENT AND ADVICE

Provide input on Facilities Master Plan Development including advice to the District in prioritizing projects, assessment of educational adequacy, ADA transition plan implementation, and loading and utilization modeling. Advise the District on phasing, grouping of projects, and other potential cost-saving approaches to construction. Manage and report on accountable school district committees or other mechanisms to periodically confirm alignment of on ongoing capital program developments with evolving district priorities. Develop aligned scopes of work focused on fulfilling these priorities, including recommendations regarding interim housing and deferred maintenance.

Verify and update the cost estimates in the Facilities Master Plan. Develop and maintain bond program spending plan.

Develop master project communication plan, incorporating project participants, District administration, site personnel, community, parents, and website.

2.2 PROGRAM MANAGEMENT DUTIES

Work with the District to develop scope, sequencing, scheduling, budgets, and communication for all Measure Y Bond Program projects. Develop and maintain reporting systems for each of those components. Report to the District on program and project status on a regular basis throughout the course of the bond program.

In cooperation with the Construction Manager(s) assist in:

2.2.1 Advise District regarding project delivery systems and bid packaging strategies. Make recommendations to District regarding ongoing modifications to the Master Plan and Measure Y funded projects to account for changes in sequencing, delays, and cost issues.

2.2.2 Assist in procurement of and negotiations of contracts for professional services such as architects, Project Inspectors (aka IORs), engineers and CEQA consultants. Participate in planning workshops. Prepare for and attend meetings with site committees and the District Measure(s) A, B, J and Y Bond Oversight Committee. Provide training to District staff and Board of Education.

2.2.3 Assist on an ongoing basis regarding communication with state and other agencies involved in construction process, including Division of the State Architect ("DSA"), California Department of Education ("CDE") and Office of Public School Construction (OPSC). Assist as requested with compliance with the California Environmental Quality Act ("CEQA") and other regulatory requirements. Assist as requested, on extra services basis, with applications for state funding.

2.3 MONITORING AND OVERSIGHT OF CONSTRUCTION MANAGERS. The Program Manager and the Construction Manager(s) will work cooperatively to produce reports and management tools based on work in this section.

The Program Manager will participate in the initial hiring of the construction managers and in each assignment of a particular project to a construction manager. The Program Manager will not be hired as a construction manager and will not receive assignment of construction management services for any construction project. The Program Manager will work cooperatively with the construction managers to produce reports and management tools based on the construction managers' work product. The Project Manager will be responsible for monitoring, coordinating, and overseeing the construction managers' performance, and District staff's performance, of the following tasks."

2.3.1 Design Phase

Work with the architects to develop and refine designs to correlate design to budget and Facilities Master Plan. Perform constructability reviews at appropriate stages of design. Prepare cost estimates. Assist with verification of site conditions. Assist in segregating bid packages for maximum cost-effectiveness for the District. Advise regarding owner-supplied equipment and other potential cost-saving measures.

Report to District on status of design and state approval versus the schedule for each project. Attend meetings to coordinate design efforts for the bond program. Assist in identifying and obtaining all necessary approvals.

2.3.2 Pre-Construction And Bidding Phase

Develop master schedules and construction schedules for each project. Develop budgets for each project.

Conduct pre-bid conferences. Schedule and conduct preconstruction meetings. Assist with prequalification and evaluating responses. Conduct bidding and report to District on results. Assist and advise regarding bid protests. Coordinate contracting with low bidders, including evaluating bonds, insurance, L/SL/SLRBE and DVBE compliance.

2.3.3 Construction Phase

Administer and coordinate the work of the prime contractors on a daily basis. Enforce performance, scheduling and notice requirements. Monitor schedule and cost information for each prime contractor on each project. Document the progress and costs of each project. Report and advise proactively on potential schedule and budget variances and impacts. Recommend potential solutions to schedule and cost problems.

Work cooperatively with District, architects, and contractors to ensure that projects are delivered on time and within budget. Attend weekly job site meetings and prepare and circulate minutes. Evaluate and process payment applications and verify progress. Evaluate and process change order requests.

Evaluate and track requests for information ("RFI's") and responses. Advise District as to status and criticality of RFI's. Work with District team to develop lists of incomplete or unsatisfactory work ("punch lists").

Submit necessary reports to state authorities, including DSA verified reports. Ensure that all other project participants submit necessary closeout documentation.

2.3.4 Post-Construction Phase

Ensure completion of punch list work. Coordinate contractor closeout requirements, including guarantees, keys, manuals, record drawings, daily logs, and verified reports. Set up programs to obtain and monitor warranty work. Advise District staff on systems operations and training. Advise on closeout of projects.

3. REQUIRED INFORMATION IN PROPOSAL

All materials submitted to the District in response to this Request for Qualifications/Proposals shall remain property of the District.

Extensive experience with OPSC, CDE, DSA, Americans with Disabilities Act ("ADA"), California Building Code ("CBC"), and Title 24 of the California Code of Regulations is mandatory.

3.1 FIRM INFORMATION

Provide a brief history of your firm, and, if a joint venture, of each participating firm. Identify legal form, ownership, and senior officials of company(ies). Describe number of years in business and types of business conducted. Identify proportion of program and construction management of overall business, and of K-12 school projects of overall business.

Identify each K-12 school project performed by your firm(s) in the past 5 years, including:

- Name of project and district;
- Contact person, telephone number and email address at district;
- Firm person in charge of each project;
- Dollar value of each project.

List all litigation arising from any K-12 school project on which your firm(s) provided program or project/construction management services in the past 5 years. State the issues in litigation, the status of litigation, names of parties, and outcome.

3.2 PROPOSED PROJECT TEAM

The selected firm shall employ at its expense professionals properly licensed and skilled in the execution of the functions required for the planning, program management, and project/construction management of the projects. All services are to be performed under the direction and control of an architect, registered engineer, and/or contractor, each of whom is required to be licensed by the State of California.

Identify the key personnel you would assign to the District's program for each phase of work, including their roles. Include at least the overall Program Director, and Program Manager(s). Describe for each his or her experience with K-12 school construction projects, including identifying those projects for the past five (5) years. List license numbers and expiration dates.

3.3 PROPOSED METHODOLOGY AND CAPABILITIES

Describe the firm's technical capabilities for capital program management including successful strategies for implementing improvements and discussing the dissenting views or criticisms and the management of same. Show and discuss examples of tools used for scheduling, budgeting, cost estimating, document control, and public information websites and describe how these facilitated program progress. Provide recent examples of reports for each category.

Describe the firm's approach to and experience with energy management / conservation, integrated communications systems, "green buildings," and evaluating technology infrastructure.

Describe the firm's experience with state and other agencies involved in the planning, design, and construction process for K-12 school projects. Describe the firm's quality control systems, including ability to monitor subconsultants, if any.

3.4 COST AND FEE SUMMARY; FORM OF AGREEMENT

The Program Manager will be paid on an hourly basis for its services, so provide a schedule of hourly rates for all staff that may perform services, and provide a proposed not-to-exceed amount for each of the three areas of services (see Sections 2.1-2.3, above) including a spreadsheet or matrix demonstrating how each not-to-exceed amount was calculated. The form of agreement to be signed by the selected Program Manager is attached to this RFP as Exhibit A, and all proposed hourly rates and not-to-exceed amounts shall be based on the services required by, and terms of, this form of agreement. The form of agreement is not negotiable.

4. **DISTRICT'S EVALUATION PROCESS**

4.1 EVALUATION AND SELECTION CRITERIA

The firm(s) awarded the services will be selected based on qualifications and demonstrated competence that include relevant experience with public agencies, including local agencies, and a proven track record of success for these types of services.

A "best value" method of selection will be utilized in awarding the services. The "best value" method evaluates the selection criteria listed below based on the designated relative weight given to each criteria as a percentage of the RFQ/P's total points possible, where Cost/Pricing is given the greatest relative weight:

Selection Criteria	Relative Weight (%)
Cost/Pricing	30
Proposed Services	20
Technical Expertise	10
Local Business Participation	10
Team Experience	10
Recent Success with Similar Services	10
Prior Experience with District Staff and Current Consultants	5
Proximity of Offices and Availability of Qualified Staff	5

4.2 SELECTION OF FINALISTS

Based on the review by its selection committee, the District will select a group of finalists for further overall evaluation as described below. The criteria for selecting finalists may include, without limitation:

- Experience and performance history of the firm with similar programs;
- Experience and results of proposed personnel;
- References from clients contacted by the District;

Technical capabilities and track record of their use; and
Other criteria of the "best value" method, as described above.

4.3 INTERVIEWS

The finalists who elect to pursue the work with the District will be invited to meet with the District's selection committee. The key proposed project staff will be expected to attend the interview. The interview will start with an opportunity for the firm to present its proposal and its project team. The interview will be an opportunity for the District selection committee to review the proposal, the firm's history, and other matters the committee deems relevant to selecting the firm. The committee may inquire as to the firm's suggested approaches to the projects and the issues identified in this Request for Qualifications/Proposals.

The District may perform investigations of proposing firms that extends beyond contacting the districts identified in the proposals. Following the interviews, the selection committee will make recommendations to District staff and the Board regarding the candidates and awarding the contract. The criteria for these recommendations will include those identified above, as well as cost considerations based on the fee proposals.

4.4 FINAL DETERMINATION AND AWARD

The District reserves the right to contract with any entity responding to this Request for Qualifications/Proposals for all or portions of the above-described phases, to reject any proposal as non-responsive, and not to contract with any firm for the services described herein. The District makes no representation that participation in the Request for Qualifications/Proposals process will lead to an award of contract or any consideration whatsoever. The District reserves the right to seek proposals from or to contract with any firm not participating in this process. The District shall in no event be responsible for the cost of preparing any proposal in response to this Request for Qualifications/Proposals.

The District may, at its option, determine to award contract(s) for only phases of the work or for only portions of the scopes of work identified herein. In such case, the successful proposing firm will be given the option not to agree to enter into the contract and the District will retain the right to negotiate with any other proposing firm selected as a finalist. If no finalist is willing to enter into a contract for the reduced scope of work the District will retain the right to enter into negotiations with any other firm responding to this Request for Qualifications/Proposals.

5. OTHER RESOURCES

5.1 LOCAL, SMALL LOCAL AND SMALL LOCAL RESIDENT BUSINESS ENTERPRISE PROGRAM

On January 29, 2014, OUSD adopted a resolution amending the 2008 Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE) and increasing the mandatory local participation requirement from twenty (20%) to fifty (50%) percent for all capital program/construction related contracts and professional services agreements. As with all OUSD projects, companies must be certified by the City of Oakland in order to earn credit toward meeting the participation requirement.

The basic Local Business Utilization Policy requires that there is a mandatory fifty percent (50%) LBU participation with a 25% or less Local Business (LBE) participation and a 25% or more Small Local or Small Local Resident Business (SLBE/SLRBE) participation. The full version of OUSD's latest Local, Small Local and Small Local Resident Business Enterprise Program can be found by going to the OUSD home page:

ousd.org> Offices and Programs> Facilities Planning & Management Department> For Contractors and Developers> Bids and Requests for Proposals> Bidding Information> 2014 Amendment to Local Business Participation Policy

5.2 2020 ASSET MANAGEMENT & FACILITIES MASTER PLAN

Found at: ousd.org> Offices and Programs> Facilities Planning & Management Department> Facilities Master Plan> Facilities Master Plan 2020

5.3 MEASURE Y BOND PROJECTS

See Exhibit B.

EXHIBIT A

OAKLAND UNIFIED SCHOOL DISTRICT MEASURE Y PROGRAM MANAGEMENT SERVICES AGREEMENT

This Measure Y Program Management Services Agreement (“Agreement”) is made and entered into effective [REDACTED], 20__ (the “Effective Date”), by and between the Oakland Unified School District (“District”) and [REDACTED] (“Contractor”).

1. **Contractor Services.** Contractor agrees to provide to District the services (“Services”) described in the Request for Qualifications/Proposals for Program Management Services for the Measure Y Bond Program, dated November 18, 2020 (“RFQP”; see attached as *Exhibit A*).
2. **Contractor Qualifications.** Contractor represents and warrants to District that Contractor, and all of Contractor’s employees, agents or volunteers (the “Contractor Parties”), have in effect and shall maintain in full force throughout the Term of this Agreement all licenses, credentials, permits and any other qualifications required by law to perform the Services and to fully and faithfully satisfy all of the terms set forth in this Agreement. Contractor and any Contractor Parties performing services shall be competent to perform those services.
3. **Term.** This Agreement shall begin on [REDACTED], 20__, and shall terminate upon completion of the Services, but no later than June 30, 2023 (“Term”), except as otherwise stated in **Paragraph 4** below. There shall be no extension of the Term of this Agreement without the express written consent of all parties. Written notice by the District Superintendent or designee shall be sufficient to stop further performance of the Services by Contractor or the Contractor Parties. In the event of early termination, Contractor shall be paid for satisfactory Services performed to the date of termination. Upon payment by District, District shall be under no further obligation to Contractor, monetarily or otherwise, and District may proceed with the work in any manner District deems proper.
4. **Termination.** Either party may terminate this Agreement at any time by giving thirty (30) days advance written notice to the other party, however the parties may agree in writing to a shorter notice period. Notwithstanding the foregoing, District may terminate this Agreement at any time by giving written notice to Contractor if Contractor materially breaches any of the terms of this Agreement, any act or omission of Contractor or the Contractor Parties exposes District to potential liability or may cause an increase in District’s insurance premiums, Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed because of Contractor’s insolvency. Such termination shall be effective immediately upon Contractor’s receipt of the notice.
5. **Payment of Fees for Services.** District agrees to pay Contractor fees at the hourly rates listed in *Exhibit B* to this Agreement. Contractor may not increase its rates over the course of this Agreement by more than 2% per year. Total fees paid by District to Contractor for Services under the Agreement shall not exceed \$_____ for the services described in Section 2.1 of the RFQP; \$_____ for the services described in Section 2.3 of the RFQP; and \$_____ for the services described in Section 2.3 of the RFQP. Contractor shall perform all Services required by

the Agreement even if the Fee has already been paid and no more payments will be forthcoming. District agrees to pay the Fee, up to the maximum amount provided herein, within sixty (60) days of receipt of a detailed invoice from Contractor, including any additional supporting documentation District reasonably requests.

5.1. Reimbursement for Certain Expenses. District shall reimburse Contractor for Reimbursable Expenses (defined below). Contractor's total reimbursement for Reimbursable Expenses shall not exceed \$ **negotiable**, which is Contractor's estimate of the maximum total cost of Reimbursable Expenses for performance of the Services. Any expenses incurred by Contractor in excess of the Reimbursable Expenses amount set forth above shall not be compensated. District agrees to pay Reimbursable Expenses, up to the maximum amount provided herein, within sixty (60) days of receipt of a detailed invoice from Contractor, including any additional supporting documentation District reasonably requests. "Reimbursable Expenses" means Contractor's actual out-of-pocket expenses, without markup, incurred in performance of the Services, including fax, reproduction expense (excluding expense for reproduction for Contractor's office use), postage, messenger, transportation, living expenses in connection with out-of-town travel, and long distance communications. Reimbursable Expenses do not include indirect costs, such as general overhead (for example, home office overhead, including technology hardware and software, or insurance premiums); nor do they include expenses incurred in connection with services that result from Contractor's wrongful acts or omissions.

6. Indemnity. Contractor shall defend, indemnify, and hold harmless District and its agents, representatives, officers, consultants, employees, Board of Trustees, members of the Board of Trustees (collectively, the "District Parties"), from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to attorney fees and costs including fees of consultants) of any kind, nature and description (collectively, the "Claims") directly or indirectly arising out of, connected with, or resulting from any act, error, omission, negligence, or willful misconduct of Contractor, the Contractor Parties or their respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees in the performance of or failure to perform Contractor's obligations under this Agreement, including, but not limited to Contractor's or the Contractor Parties' use of the site, Contractor's or the Contractor Parties' performance of the Services, Contractor's or the Contractor Parties' breach of any of the representations or warranties contained in this Agreement, or for injury to or death of persons or damage to property or delay or damage to the District or the District Parties. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph.

7. Equipment and Materials. Contractor at its sole cost and expense shall provide and furnish all tools, labor, materials, equipment, transportation services and any other items (collectively, "Equipment") which are required or necessary to perform the Services in a manner which is consistent with generally accepted standards of the profession for similar services. Notwithstanding the foregoing, District shall not be responsible for any damages to persons or property as a result of the use, misuse or failure of any Equipment used by Contractor or the Contractor Parties, even if such Equipment is furnished, rented or loaned to Contractor or the Contractor Parties by District. Furthermore, District may reject any Equipment or workmanship that does not conform to the requirements of this Agreement and Contractor must then promptly

remedy or replace it at no additional cost to District and subject to District's reasonable satisfaction.

8. **Insurance.** Without in any way limiting Contractor's liability, or indemnification obligations set forth in Paragraph 6 above, Contractor shall secure and maintain throughout the Term of this Agreement the following insurance: (i) comprehensive general liability insurance with limits of not less than \$2,000,000 each occurrence and \$2,000,000 in the aggregate; (ii) commercial automobile liability insurance with limits not less than \$2,000,000 each occurrence and \$2,000,000 in the aggregate, if applicable; and (iii) worker's compensation insurance as required by Labor Code section 3200, *et seq.*, if applicable. Neither Contractor nor any of the Contractor Parties shall commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverages have been delivered to and approved by District. All insurance policies shall include an endorsement stating that District and District Parties are named additional insureds. All of the policies shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to District. If such a notice is not given or even if District receives a notice, District may, at its sole option, terminate this Agreement. All insurance policies shall include an endorsement stating that it is primary to any insurance or self-insurance maintained by District and shall waive all rights of subrogation against District and/or the District Parties. A copy of the declarations page of Contractor's insurance policies shall be attached to this Agreement as proof of insurance.

9. **Independent Contractor Status.** Contractor is engaged in an independently established trade, occupation, or business to provide the Services required by this Agreement and is hereby retained to provide specialized services for District that are outside the usual course of District's business. Contractor is free from the control and direction of District in connection with the manner in which it provides the Services to District. Contractor understands and agrees that Contractor and the Contractor Parties shall not be considered officers, employees, agents, partners, or joint venturers of District, and are not entitled to benefits of any kind or nature normally provided to employees of District and/or to which District's employees are normally entitled.

10. **Taxes.** All payments made by District to Contractor pursuant to this Agreement shall be reported to the applicable federal and state taxing authorities as required. District will not withhold any money from fees payable to Contractor, including FICA (social security), state or federal unemployment insurance contributions, or state or federal income tax or disability insurance. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor and the Contractor Parties and otherwise in connection with this Agreement.

11. **Fingerprinting/Criminal Background Investigation Certification.** Contractor and the Contractor Parties shall at all times comply with the fingerprinting and criminal background investigation requirements of the California Education Code ("Education Code") section 45125.1, and shall complete the Fingerprinting Notice and Acknowledgement Form and Student Contract Form.

12. **Tuberculosis Certification.** Contractor and the Contractor Parties shall at all times comply with the tuberculosis (“TB”) certification requirements of Education Code section 49406. Accordingly, by checking the applicable boxes below, Contractor hereby represents and warrants to District the following:

A. ☐ Contractor and Contractor Parties shall **only have limited or no contact** (as determined by District) with District students at all times during the Term of this Agreement.

B. ☐ The following Contractor and Contractor Parties shall have **more than limited contact** (as determined by District) with District students during the Term of this Agreement and, at no cost to District, have received a TB test in full compliance with the requirements of Education Code section 49406:

_____ . [Attach and sign additional pages, as needed.]

Contractor shall maintain on file the certificates showing that the Contractor and Contractor Parties were examined and found free from active TB. These forms shall be regularly maintained and updated by Contractor and shall be available to District upon request or audit.

Contractor further agrees and acknowledges that all new personnel hired after the Effective Date of this Agreement by Contractor and Contractor Parties are subject to the TB certification requirements and shall be prohibited from having any contact with District students until the TB certification requirements have been satisfied and District determines whether any contact is permissible.

13. **Confidential Information.** Contractor shall maintain the confidentiality of, and protect from unauthorized disclosure, any and all individual student information received from the District, including but not limited to student names and other identifying information. Contractor shall not use such student information for any purpose other than carrying out the obligations under this Agreement. Upon termination of this Agreement, Contractor shall turn over to District all educational records related to the services provided to any District student pursuant to this Agreement.

14. **Assignment/Successors and Assigns.** Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of District. Subject to the foregoing, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

15. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

16. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by both parties and approved by the governing board.

17. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Alameda, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

18. **Written Notice.** Written notice shall be deemed to have been duly served if delivered in person to Contractor at the address located next to the party signatures below, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who sends the notice.

19. **Compliance with Law.** Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. Contractor shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances, including but not limited to fingerprinting under Education Code section 45125.1, confidentiality of records, Education Code section 49406 and others. Contractor agrees that it shall comply with all legal requirements for the performance of duties under this Agreement and that failure to do so shall constitute material breach.

20. **Non-Discrimination.** There shall be no unlawful discrimination in the contracting of persons under this Agreement because of race, color, national origin, age, ancestry, religion, sex, or sexual orientation of such persons.

21. **Attorneys' Fees.** If any legal action is taken to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other reasonable costs and expenses incurred in connection with that legal action.

22. **Liability of District.** Notwithstanding anything stated herein to the contrary, District shall not be liable for any special, consequential, indirect or incidental damages, including but not limited to lost profits in connection with this Agreement.

23. **Time.** Time is of the essence to this Agreement.

24. **Waiver.** No delay or omission by District in exercising any right under this Agreement shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude the District from any or further exercise of any right or remedy.

25. **Entire Agreement.** This Agreement is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a

contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms.

26. **Ambiguity.** The parties to this Agreement, and each of them, hereby represent that the language contained herein is to be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all parties shall be treated as equally responsible for such ambiguity.

27. **Execution of Other Documents.** The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

28. **Execution in Counterparts.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, facsimile, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

29. **Warranty of Authority.** The persons who have signed this Agreement warrant that they are legally authorized to do so on behalf of the respective parties, and by their signatures to bind the respective parties to this Agreement.

30. **Local Business.** Contractor shall comply with the requirements of the District's Local, Small Local, and Small Local Resident Business Enterprise Program, which may require a 50% minimum local participation requirement in the performance of this Agreement. A copy of this program may be obtained at www.ousd.org, under the Facilities Planning & Management Department drop down menu, at "Bids and Requests for Proposals."

31. **Forms.** The following forms, attached to the proposal, are incorporated into the contract:

- Roof project certification (if required; see Public Contract Code §3006).
- Fingerprinting Notice and Acknowledgement.
- Iran Contracting Act Certification.
- Workers' Compensation Certification.
- Drug-Free Workplace Certification.
- Buy American Certification.
- Local Business Participation Form.

Within ten (10) days after award and before commencement of the services, the signed agreement, insurance documentation, and Student Contract Form (see Exhibit B to the Fingerprinting Notice and Acknowledgement) shall be submitted to the District.

32. **Mediation.** A party to this Agreement shall, as a condition precedent to initiating any litigation against the other party, demand mediation of any dispute. The parties shall endeavor to include any third party claimant in the mediation. The parties shall select a mediator and schedule the mediation within thirty (30) days of the initial demand for mediation. If the parties cannot agree on a mediator, the mediator shall be appointed by JAMS. The parties to the mediation, including the parties to this Agreement, shall pay equal shares of the mediator's fees. Each party shall bear its own attorney's fees related to the mediation.

* * * * *

DISTRICT:

CONTRACTOR:

OAKLAND UNIFIED SCHOOL DISTRICT

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Address for District Notices:

Address for Contractor Notices:

Approved As To Form:

OUSD Facilities Legal Counsel

Date

EXHIBIT B

BOND PROJECTS

Reflected in Approved Bond Measure

PLEASE NOTE: The cost estimates associated with each project are NOT a legal commitment to fund those projects at those levels and the cost estimates are NOT included in the now-approved Bond Measure. Moreover, the cost estimates are just estimates, primarily based on information in the Facilities Master Plan; the actual cost of each project is almost certainly going to be different. The inclusion of the cost estimates in this document (and in the original version that was presented to the School Board as Attachment B) was to ensure that the projects identified in the Bond would likely be able to be funded by the \$735 million generated by the now-approved Bond Measure.

<u>Site</u>	<u>Proposed Project Scope</u>	<u>Est. Cost (in millions)</u>	<u>Location in Bond Proj. List</u>
Coliseum College Prep Academy (1390 66th Avenue)	› Site expansion › Additional classrooms	\$35.5	Site-Specific Projects
Claremont Middle School (5750 College Avenue)	› New kitchen › New cafeteria	\$18.0	Site-Specific Projects
Elmhurst United Middle School (1800 98th Avenue)	› Site modernization	\$10.0	Site-Specific Projects
Garfield Elementary School (1640 22nd Avenue)	› Site renovation or replacement (partial or total)	\$56.7	Site-Specific Projects
Hillcrest Elementary School (30 Marguerite Drive)	› New kitchen	\$1.7	Site-Specific Projects
Laurel Child Development Center (3825 California Street)	› Site renovation or replacement (partial or total)	\$11.5	Site-Specific Projects
Marcus Foster Educational Leadership Center (1025 2nd Avenue)	› Site plan › Site replacement › Facilities for alternative education and career technical education programing › Community service facilities › Central administration facilities, including but not limited to student and family facing services	\$15.0	Site-Specific Projects
McClymonds High School (2607 Myrtle Street)	› Site renovation or replacement (partial or total) › Site expansion to accommodate additional grade levels	\$65.0	Site-Specific Projects
Melrose Leadership Academy/ Maxwell Park Elementary School	› Site renovation (partial or total)	\$49.5	Site-Specific Projects

(5328 Brann Street and 4730 Flemming Avenue)	› Site expansion/school consolidation at 4730 Fleming Avenue		
Piedmont Elementary School (4314 Piedmont Avenue)	› New kitchen	\$2.0	Site-Specific Projects
Roosevelt Middle School (1926 East 19th Street)	› Site renovation or replacement (partial or total)	\$70.6	Site-Specific Projects
Skyline High School (12250 Skyline Blvd)	› ADA compliance › Bathrooms › Remove, replace, or acquire portables › Seismic"	\$10.0	Site-Specific Projects
Administration and Governance Center	› Administration building(s)	\$50.0	District-Wide Projects
Projects to Increase Access/ Improve Quality	› Support school expansions/consolidations	\$10.0	District-Wide Projects
Districtwide Initiatives	› Possible facilities improvements at all sites, COVID-related facilities improvements, distance learning devices and infrastructure	\$200.2	District-Wide Projects
Bond Program Management	› Project managers, construction managers, accountants to oversee projects from conception to completion, etc.	\$56.0	Miscellaneous
Contingency	› 10% contingency for unexpected costs	\$73.5	Throughout
TOTAL		\$735.0	

EXHIBIT B

Fee Schedule / Hourly Rates

SUMMARY STAFF POSITION	FY 20/21		FEE TOTAL/YEAR	
	HOURS YEAR			
Partner in Charge	34		\$ 7,052	
Program Executive	215		\$ 41,925	
Program Director	430		\$ 79,550	
Senior Program Manager (LBU)	344		\$ 60,200	
Program Manager (LBU)	860		\$ 150,500	
Program Manager	0		\$ -	
Program Manager	0		\$ -	
Program Senior Manager	0		\$ -	
Program Controls	0		\$ -	
Program Scheduler (LBU)	602		\$ 105,350	
Program Estimator	266		\$ 46,505	
Program Assist. Estimator (LBU)	860		\$ 116,100	
	3611		\$ 607,182	

SUMMARY STAFF POSITION	FY 21/22		FEE TOTAL/YEAR	
	HOURS YEAR			
Partner in Charge	83		\$ 17,378	
Program Executive	516		\$ 103,317	
Program Director	1032		\$ 196,037	
Senior Program Manager (LBU)	2064		\$ 370,880	
Program Manager (LBU)	2064		\$ 370,880	
Program Manager	1032		\$ 180,142	
Program Manager	1032		\$ 180,142	
Program Senior Manager	1032		\$ 190,738	
Program Controls	1032		\$ 143,054	
Program Scheduler (LBU)	1445		\$ 259,616	
Program Estimator	638		\$ 114,602	
Program Assist. Estimator (LBU)	2064		\$ 286,108	
	14033		\$ 2,412,893	

SUMMARY STAFF POSITION	FY 23/23		FEE TOTAL/YEAR	
	HOURS YEAR			
Partner in Charge	83		\$ 17,844	
Program Executive	516		\$ 106,086	
Program Director	1032		\$ 201,290	
Senior Program Manager (LBU)	2064		\$ 380,820	
Program Manager (LBU)	2064		\$ 380,820	
Program Manager	2064		\$ 369,939	
Program Manager	2064		\$ 369,939	
Program Senior Manager	2064		\$ 391,700	
Program Controls	2064		\$ 293,775	
Program Scheduler (LBU)	1445		\$ 266,574	
Program Estimator	638		\$ 117,673	
Program Assist. Estimator (LBU)	2064		\$ 293,775	
	18161		\$ 3,189,879	



BRAI&DU-01

KSANCHEZ

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/4/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Ames & Gough 8300 Greensboro Drive Suite 980 McLean, VA 22102	CONTACT NAME: PHONE (A/C, No, Ext): (703) 827-2277		FAX (A/C, No): (703) 827-2279
	E-MAIL ADDRESS: admin@amesgough.com		
INSURED Brailsford & Dunlavey 1140 Connecticut Avenue NW Suite 400 Washington, DC 20036	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : RLI Insurance Company A+, XI		13056
	INSURER B : Continental Insurance Company A(XV)		35289
	INSURER C : Admiral Insurance Company		24856
	INSURER D :		
	INSURER E :		
INSURER F :			

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

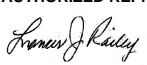
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			PSB0003063	1/1/2021	1/1/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			PSA0001125	1/1/2021	1/1/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0			6045827331	1/1/2021	1/1/2022	EACH OCCURRENCE \$ 9,000,000 AGGREGATE \$ 9,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	PSW0001703	1/1/2021	1/1/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liab.			EO000000972-24	1/1/2021	1/1/2022	Per Claim/Aggregate 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 RE: Measure Y Program Management Services Agreement

Oakland Unified School District is included as additional insured with respect to General Liability, Automobile Liability and Umbrella Liability when required by written contract. General Liability, Automobile Liability and Umbrella Liability are primary and non-contributory over any existing insurance and limited to liability arising out of the operations of the named insured and when required by written contract. General Liability, Automobile Liability, Umbrella Liability and Workers Compensation policies include a waiver of subrogation in favor of the additional insureds where permissible by state law and when required by written contract. Professional Liability policy includes waiver of subrogation in favor of Brailsford & Dunlavey's client only when required by written contract
 SEE ATTACHED ACORD 101

CERTIFICATE HOLDER

CANCELLATION

Oakland Unified School District 900 High Street Oakland, CA 94601	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 



DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

Project Information

Project Name	Facilities Planning & Management Project	Site	918
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Basic Directions

Services cannot be provided until the contract is awarded by the Board or is entered by the Superintendent pursuant to authority delegated by the Board.

Attachment Checklist	<input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider
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Contractor Information

Contractor Name	Brailsford & Dunlavey	Agency's Contact	Christopher Dunlavey					
OUSD Vendor ID #	000758	Title	President					
Street Address	1 Sutter Street, Suite 950	City	San Francisco	State	CA	Zip	94104	
Telephone	408-306-8909	Policy Expires						
Contractor History	Previously been an OUSD contractor? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
OUSD Project #	00918							

Term of Original/Amended Contract

Date Work Will Begin (i.e., effective date of contract)	4-15-2021	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	6-30-2023
		New Date of Contract End (If Any)	

Compensation/Revised Compensation

If New Contract, Total Contract Price (Lump Sum)	\$	If New Contract, Total Contract Price (Not To Exceed)	\$6,274,154.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Change in Price	\$
Other Expenses		Requisition Number	

Budget Information

If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.

Resource #	Funding Source	Org Key	Object Code	Amount
9650 0000	Fund 21 Msr J	210-9650-0-0000-8500-6289-918-9905-9999-99999	6289	\$6,274,154.00

Approval and Routing (in order of approval steps)

Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.

	Division Head	Phone	510-535-7038	Fax	510-535-7082
1.	Acting Director, Facilities Planning & Management				
	Signature 	Date Approved	2-11-2021		
2.	General Counsel, Department of Facilities Planning and Management				
	Signature  Lozano Smith, as to form only	Date Approved	2/11/21		
3.	Deputy Chief, Facilities Planning & Management				
	Signature 	Date Approved	2/11/2021		
4.	Chief Financial Officer				
	Signature	Date Approved			
5.	President, Board of Education				
	Signature	Date Approved			