

**San José Unified School District  
Independent Contractor Agreement for Special Services  
School Facility Program Consulting**

This Independent Contractor Agreement for Special Services ("Agreement") is made as of the 1st day of July in the year 2018, between the San Jose Unified School District ("District") and Hancock Park & DeLong, Inc. ("Contractor") (individually a "Party" and collectively the "Parties").

**WHEREAS**, the District is authorized by section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if those persons are specially trained and experienced and competent to perform the special services required; and

**WHEREAS**, the District is in need of such services and advice and the Contractor warrants that it is specially trained, licensed, and experienced and competent to perform the services required by the District to act on its behalf related to State Construction Funding through the School Facility Program ("SFP"); and

**WHEREAS**, the Contractor agrees to perform the services described in this Agreement in accordance with the standards of its profession, to District's satisfaction, and in accordance with this Agreement.

**NOW, THEREFORE**, the Parties agree as follows:

1. **Services.** The Contractor shall furnish to the District the following services, as more fully set forth and described in **Exhibit "A"**, attached hereto and incorporated herein by this reference ("Services" or "Work"):

**SFP Consulting Services**

2. **Term.** Contractor shall commence providing Services under this Agreement on July 1, 2018, and will diligently perform as required or requested by District. The Term for these services shall be through June 30, 2019. This Term of the Agreement may be extended upon mutual approval of both parties to the extent permissible under applicable law.
3. **Submittal of Documents.** The Contractor shall not commence the Work under this Agreement until the Contractor has submitted and the District has approved the certificate(s) and affidavit(s) and the endorsement(s) of insurance required and any other documents required in the Agreement.
4. **Compensation.** District agrees to pay the Contractor for Services satisfactorily rendered pursuant to this Agreement as more specifically described in **Exhibit "A"**. Total compensation for these services shall not exceed \$55,400 (Fifty-Five Thousand Four Hundred Dollars) inclusive of monthly fees and a \$5,000 allowance for expenses. District shall pay Contractor only for all undisputed amounts in installment payments within thirty (30) days after the Contractor submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made. Contractor shall invoice monthly unless otherwise agreed to by the Parties.
5. **Expenses.** District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing the Work, except as permitted and as indicated in **Exhibit "A"** ("Reimbursable Expenses").
6. **Materials.** Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other per diem expenses necessary to complete the services to be provided pursuant to this Agreement.
7. **Independent Contractor.** Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture 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. 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's employees.

**8. Standard of Care.**

- 8.1. Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of District. Contractor's Services will be performed, findings obtained, and reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts. Contractor's Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.
- 8.2. Contractor hereby represents that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of this Agreement.
- 8.3. Contractor shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Contractor understands that the District relies upon such professional quality, accuracy, completeness, and coordination by Contractor in performing the Services.
- 8.4. Contractor shall ensure that any individual performing Work under this Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the Work assigned to them.

**9. Originality of Services.** Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except that submitted to Contractor by District as a basis for such Services.

**10. Copyright/Trademark/Patent.** Contractor understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark, and/or patent of said matter in the name of the District. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance, and distribution of the matters, for any purpose and in any medium.

**11. Termination.**

- 11.1. **Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement. Written notice by District shall be sufficient to stop further performance of Services by Contractor. Notice shall be deemed given when received by the Contractor or no later than three days after the day of mailing, whichever is sooner.
- 11.2. **Without Cause by Contractor.** Contractor may, upon thirty (30) days' notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Contractor for services satisfactorily rendered to the date of termination. Written notice by Contractor shall be sufficient to stop further performance of services to District. Contractor acknowledges that this thirty (30) day notice period is acceptable so that the District can attempt to procure the Services from another source ("Replacement Contractor").
  - 11.2.1. Contractor agrees that Services rendered prior to termination in accordance with this subsection (Without Cause by Contractor) may have a reduced value to the District based on, without limitation, the incomplete nature of the Work product and Services. Among other considerations, the Work product and Services performed may need to be analyzed, evaluated and assumed by Replacement Contractor as a basis for its work. As a result, Contractor's compensation for Work Product and Services rendered prior to that date of termination may be reasonably reduced by District.
- 11.3. **With Cause by District.** District may terminate this Agreement upon giving written notice of intention to terminate for cause. Cause shall include:
  - 11.3.1. Material violation of this Agreement by the Contractor; or
  - 11.3.2. Any act by Contractor exposing the District to liability to others for personal injury or property damage; or
  - 11.3.3. Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors,

or a receiver is appointed on account of Contractor's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required Services from another Contractor. If the expense, fees, and/or costs to the District exceed the cost of providing the service pursuant to this Agreement, the Contractor shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

- 11.4. Upon any termination, Contractor shall provide the District with all documents produced maintained or collected by Contractor pursuant to this Agreement, whether or not such documents are final or draft documents.

## 12. Indemnification.

To the furthest extent permitted by California law, Contractor shall, at its sole cost and expense, defend, indemnify, and hold harmless the District, the State of California, and their agents, representatives, officers, employees, trustees, and volunteers (the "indemnified parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including, but not limited to, personal injury, death, property damage, and reasonable attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Agreement or from any activity, work, or thing done, permitted, or suffered by the Contractor in conjunction with this Agreement, to the extent caused by the negligence or willful misconduct of Contractor, or its employees or subcontractors. The District shall have the right to accept or reject any legal representation with which Contractor proposes to defend the indemnified parties.

## 13. Insurance.

- 13.1. The Contractor shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

13.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance that insure against all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from Contractor's performance of any portion of the Services (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.).

13.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

13.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor's profession.

Type of Coverage	Minimum Requirement
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 2,000,000
General Aggregate	\$ 4,000,000
<b>Professional Liability</b>	\$ 1,000,000
<b>Workers Compensation</b>	Statutory Limits
<b>Employer's Liability</b>	\$ 1,000,000

- 13.2. **Proof of Carriage of Insurance.** Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverages have been delivered in

duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

- 13.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after the date of mailing notice."
- 13.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- 13.2.3. All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.
- 13.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

- 14. **Assignment.** The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor.
- 15. **Compliance with Laws.** Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances, and regulations. Contractor shall give all notices required by any law, ordinance, rule, and regulation bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules, or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any Work that is in violation of any laws, ordinances, rules, or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.
- 16. **Permits/Licenses.** Contractor and all of Contractor's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement.
- 17. **Employment with Public Agency.** Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which Services are actually being performed pursuant to this Agreement.
- 18. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act, beginning with Government Code section 12900, and Labor Code section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).
- 19. **Audit.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.
- 20. **Staffing and District's Evaluation of Contractor and Contractor's Employees and/or Subcontractors.** District may evaluate the Contractor in any manner which is permissible under the law. The District's evaluation may include, without limitation:
  - 20.1. Requesting that District employee(s) evaluate Contractor and Contractor's employees and subcontractors and each of their performances.
  - 20.2. Announced and unannounced observance of Contractor, Contractor's employee(s), and/or subcontractor(s).

- 20.3. Contractor agrees to remove or re-assign its employees as may be reasonably requested by the District as a result of the District's evaluation. The District shall provide its request in writing, convey the basis for its request and provide reasonable time for Contractor to satisfy the District's request.
- 20.4. Contractor anticipates staffing the project as follows (subject to change by mutual agreement of the Parties)

**Christopher DeLong**

**Bruce Hancock**

21. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with the Services performed in connection with this Agreement.
22. **Disputes:** In the event of a dispute between the Parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Contractor shall neither rescind the Agreement nor stop Work.
23. **Confidentiality.** Contractor and all Contractor's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. This requirement to maintain confidentiality shall extend beyond the expiration or any earlier termination of this Agreement.
24. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

**San Jose Unified School District**

855 Lenzen Avenue

San Jose, CA 95126

Tel: (408) 535-6000

Attn.: Director of Operations, Facilities and Construction

**Hancock Park & DeLong, Inc.**

1425 River Park Drive, Suite 285

Sacramento, CA 95815

Tel: (916) 662-7210

Attn.: Christopher L. DeLong, President

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

25. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
26. **California Law.** This Agreement shall be governed by and the rights, duties, and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the California county in which the District's administration offices are located.
27. **Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
28. **Severability.** If any term, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired, or invalidated in any way.
29. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

30. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
31. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Contract shall be construed as if jointly prepared by the Parties.
32. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
33. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.
34. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
35. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by this reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

**SAN JOSE UNIFIED SCHOOL DISTRICT**

**HANCOCK PARK & DELONG, INC.**

Date: \_\_\_\_\_

Date: 8/30/2018 8:52:41 AM PDT

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

DocuSigned by:  
By: Christopher DeLong  
CE361D1390964F4...

Print Name: Florence Eng

Print Name: Christopher L. DeLong

Director, Business Support Services

President

DS  


**Exhibit A**  
**Scope of Services and Compensation**

1. New Construction and Modernization Eligibility
  - a. Gather baseline eligibility data submitted to the Office of Public School Construction (OPSC) in prior years.
  - b. Review and update new construction eligibility on a district-wide basis and/or High School and Super High School Attendance Areas using 5 year and 10 year projections. Include analysis of alternative projection methods including dwelling unit augmentation (house count), birth rates and alternative 'weighting' as permitted for new construction eligibility under the regulations of the State Allocation Board (SAB).
  - c. Review modernization eligibility on a school site by site basis, and update site specific eligibility for each school site where eligibility is found.
  - d. Prepare and submit eligibility applications to the OPSC as necessary.
2. Applications for Funding
  - a. Coordinate with District, design professional and other consultants as necessary to maximize state funding assistance.
  - b. With assistance from the District and design professional, prepare requests for the California Department of Education (CDE) approval of the project site and plans, as applicable. Act as a liaison with the CDE to address concerns and questions raised in the review of the project(s).
  - c. Act as a liaison with the OPSC/SAB to address concerns and questions raised in the review of the project(s), including any formal responses necessary as a result of "15-day" and "4-day" letters.
  - d. Prepare requests for fund releases or for participation in Priorities in Funding Rounds, as necessary.
3. Accountability
  - a. Prepare, with assistance from the District, expenditure reports and worksheets as required for the reporting of project expenditures.
  - b. Assist with financial and program compliance audits conducted by the OPSC if requested by the District, including any formal responses necessary as a result of "30-day" letters.
4. General Consulting
  - a. Work with the District to develop and execute strategies to secure state funding for the implementation of facility needs.
  - b. Review project budgets and scope in concert with project design professionals to maximize state funding opportunities.
  - c. Provide liaison activities with the OPSC, CDE, the Division of the State Architect and other agencies involved in the school facilities process as needed.
  - d. Provide continuing technical assistance to the District on the state school facilities programs, laws and regulations including ad hoc questions related to the above.
  - e. Apprise the District of the relevant activity in the state school facilities programs by monitoring and reporting the actions of the SAB, the SAB Implementation Committee, the Division of the State Architect Advisory Board, and proposed facilities related legislation.
  - f. Provide other services related to the District's facilities needs as may be within our experience and capabilities, as requested by the District.
5. Compensation
  - a. District agrees to pay the Contractor a fee of Four Thousand Two Hundred dollars (\$4,200.00) per month.
  - b. The District shall reimburse additional travel, meals, and lodging when such expenses are incurred at the request of the District. All such claims shall be authorized by the District prior to the Contractor incurring the expense.
  - c. The Contractor shall submit monthly invoices for services under this Agreement.
6. District Review and Responsibility
 

The District shall be responsible for reviewing all data included in documents, forms, and reports prepared by the Contractor on behalf of the District. The District shall be responsible for meeting any certification requirements and shall be responsible for consulting legal counsel as its deems necessary related to the preparation and

submittal of documents, forms and reports. The District also understands that the Contractor cannot control the processes of the applicable Local, State, or Federal agencies in reviewing and approving any District application or appeal request. The Contractor will use its best efforts to assist the District with all agencies but cannot guarantee favorable results.