



**REQUEST FOR PROPOSALS AND QUALIFICATIONS:**

**Conference Room AV Design, Installation, and Service**

**Issue Date: October 6th, 2017**

**Due Date: October 20th, 2017**

***In order to be considered, proposals must be signed and delivered to WestEd by 4:00 p.m. on **November 10th, 2017**, via email to [oleon@wested.org](mailto:oleon@wested.org) or by mail to the WestEd Procurement Department at 4665 Lampson Ave., Los Alamitos, CA 90720***

***Proposal responses will be considered valid for a period of 120 calendar days after the proposal due date.***



## PROPOSAL FOR CONFERENCE ROOM DESIGN, INSTALLATION AND SERVICE

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## I. INTRODUCTION

WestEd is soliciting proposals from Conference Room Audio Visual Design, Installation and Service firms (Firms) to design and install comprehensive meeting room technology solutions in at least 4-6 “huddle” meeting rooms (4-12 persons) and one large training room, approximately 2,000 square feet (Project). The project site is in the City of Alameda and within a newly leased facility. Project schedule is expected to coincide with other significant tenant improvements. The preliminary budget for this project is \$200,000 inclusive of all design, equipment procurement, and installation costs as well as indirect costs.

WestEd is interested in learning of the proposed fee for design, procurement, installation and a 3-year service and maintenance agreement. The proposing firm should provide information of any work included in the proposal is handled by a third party. WestEd also wants to know of any work that is necessary to complete the Project but is not included in the proposal, such as what might need to be handled by WestEd (e.g. high-voltage electrical work and network and telephone integration). Finally, WestEd wants to know the proposer’s experience with similar projects, their approach to fulfilling the requirements of the Project and the experience of key personnel who will be assigned to the Project.

## II. BACKGROUND

WestEd is a not-for-profit research, development, and service agency that works with education and other communities to promote excellence, achieve equity, and improve learning for children, youth, and adults. WestEd has over 640 employees, located in 16 offices across the United States, and had revenue in excess of \$160 million for Fiscal Year 2016.

WestEd is a Joint Powers Agency (“JPA”) formed under the California Joint Exercise of Powers Act, California Government Code section 6500 et seq. and governed by public entities in Arizona, California, Nevada, and Utah. WestEd’s Board of Directors is comprised of members representing agencies from these states, as well as other national education and business leaders. WestEd’s income is tax exempt under Section 115 (1) of the Internal Revenue Code.

WestEd complies with the required federal regulations on procurement, as well as applicable State procurement law and procedures.

Efforts, including affirmative steps prescribed by federal regulation (if applicable), will be made by WestEd to utilize small and minority-owned businesses, women’s business enterprises and labor surplus area firms when possible. If the resulting contract is being funded by federal funds, the selected firm may be

required to undertake affirmative steps to utilize such firms in subcontracts if this contract is federally funded.

For the purposes of this RFP and Wested's obligations to meet SBE requirements, an information technology supplier can be classified as a SBE by having a 150-employee size standard and the procurement must consist of at least 15% and not more than 50% of value added services, as measured by the total contract price. In addition, the offeror must comply with the manufacturing performance requirements, or comply with the non-manufacturer rule by supplying the products of small business concerns, unless SBA has issued a class or contract specific waiver of the non-manufacturer rule (13 CFR 121.201, Subsector 541519.18).

### **III. WESTED CONTACT**

All communications, including any requests for clarification, concerning this RFP should be addressed in writing to the following:

Oscar Leon  
Procurement Manager  
oleon@wested.org

**IV.SOLICITATION FORM**

**FAILURE TO SIGN THIS PAGE WILL DISQUALIFY YOUR RESPONSE**

If awarded, the undersigned offers and agrees to furnish the services described in this Request for Proposal at the prices and terms stated, subject to mutually agreed upon terms and conditions. The undersigned warrants and represents their authority to bind the firm into an agreement subject to the terms and conditions of this Request for Proposal.

Company Name:

Street Address:

City, State Zip:

Email:

Telephone:

By (Authorized Signature)	Date Signed:
Print name and title of Authorized Signatory	

**ALL SPECIFICATIONS, TERMS, AND CONDITIONS OF THIS PROPOSAL WILL BE INCORPORATED INTO ANY RESULTING AGREEMENT.**

## V. SOLICITATION KEY DATES AND TIMELINE

*(Dates are subject to change at any time in WestEd's sole discretion)*

<b>RFP Activity</b>	<b>Dates</b>
RFP Released, Posted online	October 27 <sup>th</sup> , 2017
Questions Due by bidders	November 3 <sup>rd</sup> , 2017
Response to Questions Posted	November 8 <sup>th</sup> , 2017
Proposal Due Date	November 10 <sup>th</sup> , 2017
Award Notice	November 15 <sup>th</sup> , 2017
Meeting with Selected Vendor to begin contract negotiation	November 21 <sup>st</sup> , 2017
Start of contract	TBD

## VI. SCOPE OF WORK

**A. Pre-installation Services:** Contribute to the design development process in the following ways:

- Preliminary Design Development: Coordinate with WestEd Facilities and Property Management, General Contractor and Architect in the design of meeting rooms.
- Value-engineering: Provide expertise in design and equipment selection throughout the design process that cut costs while maintaining or enhancing design intent and quality, value, and functional performance of improvements.
- Provide complete layout diagrams, budget and schedule for approval by WestEd's WestEd Facilities and Property Management team.

**B. Project Management and Installation.** The services that are expected to be provided by Firm include:

- Lead all design and installation meetings, produce minutes and follow up on tasks assigned to Project team members during the meeting.
- Establish procedures to identify any changes in Project status or scope that may have a direct impact on time or cost.
- Advise WestEd's project representatives on prioritization of critical issues that need resolution.
- Procure and install equipment needed for project.
- Verify appropriate connectivity and functionality of installed equipment.

**C. Service and Maintenance.** WestEd will need the selected Firm to maintain the AV equipment and provide technical support for a period of 3 years.

SLA shall be provided to WestEd for both remote and on premises service.

**D. Design Guidelines.** WestEd seeks a design and installation that meets all requirements, and addresses "nice to haves".

**Large Training Room: Preliminary designs are for a 2,000 square feet meeting room that can be subdivided into two 1,000 square foot spaces. The following are WestEd's requirements and guidelines for this room:**

- AV technology should support the ability of the room to be subdivided, functioning as two independent systems when the room is divided and one when the room is opened. AV System should auto configure (for two

- rooms) when air wall is closed and when opened (for one room).
- Both halves of the room will have identical AV systems and both will have the same functional requirements.
  - Both halves of the room employ multiple PTZ cameras for use with MacMini's (and option for VTC codec), as well as local recording.
  - AV Equipment to be racked in centralized network closet.
  - Both halves allow for 2 concurrent MacMini i7s with full integration into AV System. One for Desktop apps such as WebEx, the other for possible future use with ZoomRooms.
  - Both Halves have option to integrate into AV System and allow for a Video Conferencing codec at a later date (h.323, h.264, SIP, h.239, h.264).
  - Both halves have embedded audio systems (microphones and speakers) providing clear audio to all persons in the room, for use with Video Conferencing, Web Collaboration software (see below) Telephone (Shoretel) VOIP-based audio conferencing, or local only audio presentation.
  - Video displays or projectors should be viewable for all participants, regardless of table and chair placement. Displays will be capable of a minimum of 1080p resolutions. Estimate of 3 Projectors/Screens or displays for each half of room.
  - In the case of projectors (in lieu of displays) projection screens should automatically lower and raise via control system.
  - Rooms will have wireless presentation capabilities to all video displays.
  - Rooms will have an HDMI wall port and floor port (located near the "front" of the room) as a hard-wired backup to the wireless presentation ability.
  - Rooms will have wireless network based push presentation abilities, broadcast to either tablets or laptops used by participants, allowing for "Bring Your Own Device" use cases.
  - Rooms will have both hardwired (wall mounted) and wireless tablet remote control for all end user facing functions of audio visual system.
  - Audio Visual system in both rooms will support video conferencing via h.323 and h.264, as well as h.239 data sharing via video conference.
  - Audio Visual system will support and provide audio and video input/output from application based web collaboration software, i.e. Zoom Rooms, Cisco WebEx, Google Hangouts, GoToMeeting, and Blackboard Collaborate installed on an integrated MacMini i7. One MacMini per side of room.
  - Integrated MacMini's can be used as stand alone, or as the source of a data share during a video conference.
  - Embedded workstation can be used via wireless keyboard and mouse.

- Audio Video System will provide closed captioning for the audio impaired via dedicated CC display/feed and/or Audio Assisted Device.
- Speakers lectern or mobile panel will contain 2 small video screens enabling presenter to view their presentation (from any room camera) on one screen, the other as a monitor for the integrated computer (MacMini i7) with a small keyboard and mouse/trackpad in order to run a presentation.
- Handheld remote presentation device and wall mounted panel used to manage and control AV system for different uses (Video Conference, Presentation, Telephone Call, etc.).
- Audio Visual system will include wireless hand held and lapel based microphones.
- Audio Visual system will include a power backup system.
- Audio System will allow for “Speech Lift” controls from Remotes (enable/disable).
- All remotes and display “wallpaper” must contain WestEd branding and logos.
- Audio Visual system will have the ability to save profiles for camera position (PTZ), display use, volume control.
- End user documentation using screen shots to show control of system via hardwired and tablet controller.
- Rooms will have a 4x USB input wall plate linked to MacMini for accessing USB drives.
- USB extender to IR receiver for wireless keyboard should not be readily accessible for participants, eliminating the possibility of it being used for something other than the wireless keyboard.
- Full documentation of system configurations, schematics, copy of system code and end user manuals to be provided by Firm and approved by WestEd.
- Digital signage at entry, showing occupied/unoccupied, room calendar and allowing for booking of room from touch panel.
- Occupancy detection, releasing rooms in case of “no-shows”.

### **Large Meeting Room**

- Dual 80-inch wall mounted commercial grade flat panel LED displays (minimum 1080p).
- Both halves allow for 2 concurrent MacMini i7s with full integration into AV System. (1 used for Desktop apps such as WebEx, the other for possible use with Zoom Rooms).
- LED displays can be used as dual (non-mirrored) displays for room based

- MacMini. Control also allows for mirroring.
- Wireless laptop presentation capabilities via Staff and Guest wireless networks.
  - Embedded audio system (microphones and speakers) providing clear audio to all persons in the room, for use with Video Conferencing, Web Collaboration software (see below) Telephone (Shoretel) VOIP-based audio conferencing, or local only audio presentation.
  - Audio Visual system will support and provide audio and video input/output from application based web collaboration software, i.e. Zoom Rooms, Cisco WebEx, Google Hangouts, GoToMeeting, and Blackboard Collaborate installed on an integrated MacMini i7.
  - HDMI hard wired connection for laptop to display.
  - Shoretel integration into room audio system
  - Both halves allow for 2 concurrent MacMini i7s with full integration into AV System.
  - Two PTZ Cameras
  - All wiring hidden in either wall, floor or table (excluding HDMI hard wired connection).
  - Digital signage at entry, showing occupied/unoccupied, room calendar and allowing for booking of room from touch panel.
  - Occupancy detection, releasing rooms in case of “no-shows”.

**Nice to Haves (For Large Training Room):**

- Integrated over the air HD television in Large Training Room (for disaster readiness).
- Mobile video camera for use with VTC and local recording.

## VII. PROPOSAL OUTLINE

In order to simplify the review process and to obtain the maximum degree of comparability, the proposals should include the following items and be organized in the manner specified below.

### 1. Letter of Transmittal

A letter of transmittal briefly outlining the firm’s understanding of the work and general information regarding the firm and individuals to be involved is limited to a maximum of two pages. The letter should clearly identify the local address of the office of the firm performing the work, the telephone number, and the name of the authorized representative. The letter shall include a clear statement from the firm that this offer is binding and shall remain open for 120 days from the due

date of this RFP and acknowledges that its proposal cannot be withdrawn within that time without the written consent of WestEd.

## 2. Table of Contents

Include a table of contents that identifies the material by section, page number, and a reference to the information to be contained in the proposal.

## 3. Solicitation Form

The Solicitation Form included in the RFP/RFQ shall be included here.

## 4. Profile of Firm Proposing

- a. Provide a brief description of the firm, its size and the locations of its offices. State whether the firm is a qualified small or minority-owned business, women business enterprise or labor surplus area firm and, if certified as such by the State of California or United States Government, indicate which department or agency has so certified the firm.
- b. State the firm's entity type (i.e. sole proprietorship, corporation, etc.) and state of incorporation or organization, if applicable.
- c. State whether the firm is in compliance with the applicable registration, licensure, and permit requirements to do business in California and the applicable county and/or city.
- d. Describe the local office from which the work is to be performed.
  1. Location of office.
  2. Current size of the office.
  3. The size of professional staff by level who would be working on this project, such as partner, manager and supervisor, senior, and other professional staff.
  4. The credentials and qualifications of key professional staff who will be involved on this project.

## 5. Qualifications

1. Management experience:
  - 1.1. Provide the name, title, including a detailed description of the role and job responsibilities related to all personnel assigned to the Project, including experience, years with the firm and a list of relevant projects completed. Indicate who will serve as the primary contact for WestEd.
  - 1.2. Provide the details related to any relevant projects especially projects completed in the City of Alameda, including scope of work and contract sum.

- 1.3. Provide a list of any projects within the last three years on which the firm proposing was contracted and was terminated, held in default, or failed to complete the work. Include the name of the project(s), timeframe of the project and circumstances surrounding the termination or default.
- 1.4. Provide information regarding any recent legal proceedings and arbitration against the firm proposing that are current and occurred within the last three years.
2. Quality control:
  - 2.1. Describe the firm's policy on notification of changes in key personnel.
  - 2.2. Briefly describe the firm's system of quality control to ensure the work meets a high-quality standard.
3. Provide a description of how the firm's expertise, technical and professional skills will meet the goals and fulfill the general functions identified in this RFP.
4. References:
  - 4.1. Include five (5) client references for work that is comparable to the scope of this Project. Include contact information for the architects involved in the work.
  - 4.2. Provide a minimum of three (3) credit references.

## 6. Project Specific Experience

Provide a description of the three most relevant AV Installation contracts held by the proposing firm within the last five years, one page per project, to include:

- a. Role of the firm
- b. Dollar value of the project
- c. Dollar value of fee
- d. Project description
- e. Staffing
- f. Duration of project
- g. Relationship to client
- h. Client contact information: name, position, entity name, telephone number, and email address for each project

## 7. Scope of Services and Proposed Project Schedule

Describe the firm's understanding of the scope of services to be provided. Provide a description of how the firm will approach this work including how the proposing firm will manage the design process, installation, overall project schedule and ongoing service and maintenance.

## 8. Fees and Compensation

Provide an itemized fee proposal listing:

- Equipment direct costs
- Mark-ups on equipment
- Labor
- Overhead
- Profit

In addition, provide the following information as relevant to the fee proposal:

- a. The hourly rate of staff to be assigned to this project, by staff classification.
- b. Estimates of out-of-pocket expenses.
- c. The frequency and timing of the firm's billing process.

Identify all subcontracted personnel or work contained in the proposal and described the firm's third party vendor selection process.

#### 9. Fiscal Stability

Provide evidence of corporate stability including:

- a. A current report from any commercial credit rating service such as Dunn and Bradstreet or Experian; or
- b. A letter from a financial institution stating a current line of credit; and
- c. Latest audited financial statement and/or annual report that has been certified by a CPA. This information will remain confidential and is not subject to public disclosure.

#### 10. Exceptions to Contract Requirements

WestEd's draft form of Agreement is attached as Exhibit "A" and incorporated herein by reference. Any exceptions to the requirements of the draft form of Agreement shall be noted in the proposal. The Firm should pay particular attention to the insurance and indemnification requirements as well as to the standard public works requirements (i.e. prevailing wage) set forth therein. WestEd shall have no obligation to accept any exceptions and may reject any proposal noting exceptions to its contract requirements.

### **VIII. PROPOSAL SUBMISSION AND SELECTION PROCESS**

By use of numerical and narrative scoring techniques, proposals will be evaluated by WestEd against the factors specified below. The relative weights of the criteria—based on a 100-point scale—are shown below.

Criteria	Points
1. Qualifications, experience, references, and ability to carry out the described scope of work	35 points
2. Proposed methodologies and processes to accomplish work	25 points
3. Fees / expenses	25 points
4. Completeness of proposal and adherence to RFP instructions.	10 points
5. Qualified small or minority-owned firm, women business enterprise or labor surplus area firm.	5 points

## IX. REVIEW PROCESS

WestEd may, at its discretion, request interviews/presentations by or a meeting with any or all firms, to clarify or negotiate modifications to the firm’s proposal. However, WestEd reserves the right to make an award without further discussion of the proposals submitted. Therefore, proposals should be submitted initially on the most favorable terms, from both technical and price standpoints, that the firm can propose. WestEd contemplates award of the contract to the responsive, responsible firm whose proposal is the most advantageous to WestEd, based on the highest total points and its decision is final.

It is WestEd’s policy to utilize, whenever possible, small businesses, small business disadvantaged business concerns, veteran-owned small businesses, minority-owned firms, and/or woman-owned business enterprises. Therefore, firms that meet these criteria will be given preference, should they meet all other stated criteria in the RFP.

## X. NOTICE TO FIRM(S)

All materials provided to WestEd become the property of WestEd and may be returned only at WestEd’s sole discretion. WestEd is a public entity. All proposals and any materials submitted with a proposal may be deemed public records subject to disclosure pursuant to the California Public Records Act. No portion of any proposal or materials submitted therewith will be withheld from disclosure as

proprietary, trade secret or confidential unless that portion is clearly marked by the firm as such, and the firm agrees to indemnify WestEd against any claim or action to compel disclosure of such portion of the proposal. WestEd is not obligated to accept any proposal or to negotiate with any entity. All transactions are subject to the final approval of WestEd, which reserves the right to reject any and all proposals without liability. All costs directly or indirectly related to a response to this RFP will be borne by the firm.

The contract, if any, shall be awarded to the Contractor whose proposal is most advantageous and presents the best value to WestEd, based on the evaluation criteria set forth in this RFP. WestEd may at its sole discretion select the response that best fits its needs, may choose to cancel the RFP, or to not select any offeror. A selection committee will evaluate the responses based on established criteria including compliance with the direction herein, experience and qualifications, cost, financial position of the Contractor, and other factors as stated in this RFP. If selected, the successful Contractor will enter into a written agreement with WestEd that will include service agreements and compensation agreements.

Awards may also be made to the subsequent responsible bidders who will be considered the Back-up Contractors, and who will be called in ascending order, based upon their ranking by best value, if after WestEd issues a Notice of Award, WestEd and the selected Contractor awarded do not subsequently execute an agreement.

All information in this RFP should, for purposes of this RFP, be considered proprietary and confidential. Information contained in this RFP should not be shared or distributed without the expressed written consent of WestEd.

## **XI. REJECTION OF PROPOSAL(S)**

WestEd reserves the right, in its sole discretion, to reject any or all proposals, in whole or in part, without incurring any cost or liability whatsoever. All proposals will be reviewed for completeness of the submission requirements. The proposal may be rejected if it fails to meet a material requirement of the RFP, or if it is incomplete or contains irregularities. A deviation is material to the extent that a proposal is not in substantial accord with RFP requirements.

A deviation from the RFP requirements may cause a bid to be rejected. WestEd may or may not waive an immaterial deviation or defect in a proposal. WestEd's waiver of an immaterial deviation or defect will in no way modify the RFP or excuse a bidder from full compliance with the RFP requirements.

Any proposal may be rejected where it is determined to be not competitive, or where the cost is not reasonable.

Proposals that contain false or misleading statements may be rejected if in WestEd's opinion the information was intended to mislead WestEd regarding a requirement of the RFP.

WestEd may reject a proposal from a firm it finds non-responsible or non-responsive. Any person or entity that has substantially assisted WestEd in preparing any part of this RFP is prohibited from submitting a proposal. Submission of a proposal to WestEd shall constitute the Contractor's certification that the proposal is not collusive.

## **XII. COMPLIANCE WITH LAWS**

Any offeror must affirmatively agree and certify that it will comply with all applicable federal, state, and local laws and regulations, including but not limited to the provisions of the Fair Employment and Housing Act (Govt. Code, § 12900 et seq.) and any applicable regulations promulgated there under (Cal. Code of Regs., tit. 2, § 72850.0 et seq.). Any Contractor must affirmatively agree to include the non-discrimination and compliance provisions of this clause in any and all subcontracts to perform work under the agreement.

## **XIII. WRITTEN QUESTIONS AND ADDENDA**

Written questions or comments regarding this RFP must be in writing and received no later than 4 p.m. on November 3<sup>rd</sup>, 2017. Questions should be emailed to the Procurement Manager, Oscar Leon oleon@wested.org. All questions will be responded to via email. Contractor(s) invited to submit a proposal understand and agree that they have an affirmative duty to inquire and seek clarification regarding anything in this RFP that is unclear or open to more than one interpretation.

WestEd, at its sole discretion, may make questions submitted by offerors and responses to the submitted questions available to all offerors.

WestEd reserves the right in its sole discretion to revise or amend this RFP prior to the stated submittal deadline. Any such revisions will be made by written addenda to this RFP. Contractors are responsible for verifying they have received, and all proposals shall acknowledge receipt of, all addenda issued by WestEd relating to this RFP. Failure to acknowledge receipt of all such addenda may render a proposal nonresponsive.

#### **XIV. SUBMISSION INSTRUCTIONS**

Proposal submissions must be received no later than 4:00 PM Pacific time on Friday, November 10<sup>th</sup>, 2017. Any response received after this date may be returned or not considered. Responses should be submitted electronically to the Procurement Manager at [oleon@wested.org](mailto:oleon@wested.org). If Firms wish to also submit a hard copy of the proposal, it needs to be postmarked no later than the due date and mailed to:

WestEd  
4665 Lampson Ave.  
Los Alamitos, CA 90720  
Attn: Oscar Leon

Submission of a proposal shall constitute the firm's representation that it:

- Has thoroughly examined and become familiar with the scope of work set forth in this RFP;
- Understands the requirements of the scope of work, the nature of the work and all other matters that may affect the work;
- Will honor its proposal for no less than 120 days after the submission date stated in this RFP (or until execution of a final contract with the selected firm, if sooner), and acknowledges that its proposal cannot be withdrawn within that time without the written consent of WestEd;
- Will comply with all requirements set forth in this RFP, and in the ensuing contract, if any.

#### **XV. PROTESTS**

Following the selection of the apparent successful firm, WestEd shall notify all firms of its intent to award a contract to such firm. Any protest to the award of the contract to the apparent successful firm shall be submitted to WestEd in writing within no less than five (5) calendar days from the date of such notice. Any protest shall state with specificity the ground on which the protestor alleges the contract may not be awarded to the apparent successful firm. WestEd shall consider any properly submitted protest and may accept or reject such protest as it determines appropriate in its sole discretion.

#### **XVI. GENERAL PROVISIONS**

- A. Amendments to RFP. WestEd reserves the right to amend the RFP or issue to all Respondents a Notice of Amendment to answer questions for clarification.

- B. No Commitment to Award. Issuance of this RFP and receipt of proposals does not commit WestEd to award a contract. WestEd expressly reserves the right to postpone the RFP process for its own convenience, to accept or reject any or all proposals received in response to this RFP, to negotiate with more than one Respondent concurrently, or to cancel all or part of this RFP.
- C. Amendments to Proposals. No amendment, addendum or modification will be accepted after the deadline stated herein for receiving Proposals. Respondent may modify or amend its Proposal only if WestEd receives the amendment prior to the deadline stated herein for receiving Proposals.
- D. Non-Responsive Proposals. A Proposal may be considered non-responsive if conditional, incomplete, or if it contains alterations of form, additions not called for, or other irregularities that may constitute a material change to the Proposal.
- E. Late Proposals. WestEd will not be responsible for Proposals that are delinquent, lost, incorrectly marked, sent to an address other than that given herein, or sent by mail or courier service and not signed for or acknowledged by WestEd.
- F. Costs for Preparing. WestEd will not compensate any Respondent for the cost of preparing any Proposal, and all materials submitted with a Proposal shall become the property of WestEd. WestEd will retain all Proposals submitted and may use any idea in a Proposal regardless of whether that Proposal is selected.
- G. Alternative Proposals. Only one final proposal is to be submitted by each Firm. Multiple proposals will result in rejection of all proposals submitted by the Respondent.
- H. Public Documents. All Proposals and all evaluation and/or scoring sheets shall be available for public inspection at the conclusion of the selection process.

**Exhibit "A"**

**Exhibit "A"  
Sample Agreement**

Proposer must submit all exceptions to the below agreement as part of the RFP submission for WESTED review.

**CONSULTANT SERVICES AGREEMENT**

This AGREEMENT is made and entered into this <<Date>> day of <<Month>> in the year <<Year>>, between **WestEd**, a Joint Powers Agency hereinafter referred to as "WESTED", and <<NAME OF CONSULTANT>>, hereinafter referred to as "CONSULTANT". The WESTED and the CONSULTANT are sometimes referred to herein as a "PARTY" and collectively as the "PARTIES". This AGREEMENT is made with reference to the following facts:

**WHEREAS**, WESTED requires specialized services and/or advice in connection with certain professional consulting, financial, economic, accounting, estimate and/or administrative matters where such services and advice are not available to the WESTED without cost either internally or from other public agencies;

**WHEREAS**, CONSULTANT has represented to the Governing Board that CONSULTANT is knowledgeable and qualified in skills required for this project and covenants that CONSULTANT is capable of performing the services required under this agreement; and

**WHEREAS**, WESTED desires to obtain specialized services and/or advice for the Professional Audio-Visual Design and Installation Services described further in the RFP No. \_\_\_\_\_ dated \_\_\_\_\_, 2017, hereinafter referred to as the "PROJECT", located in the City of Alameda; and

**WHEREAS**, CONSULTANT has indicated its willingness and commitment to provide its specialized services and/or advice to the WESTED on the terms hereafter set forth in this AGREEMENT.

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

**ARTICLE I  
SCOPE OF SERVICES AND RESPONSIBILITIES**

1. Services. As set forth herein, the WESTED may pursuant to this AGREEMENT, from time to time, issue Task Orders to CONSULTANT

authorizing certain work, and the provisions of this AGREEMENT shall apply to all such Task Orders. CONSULTANT shall not perform and WESTED shall not be liable for any work performed by CONSULTANT unless written authorization from WESTED is given to CONSULTANT in the form of such Task Order(s) prior to the performance of such work.

The CONSULTANT shall provide to the WESTED on the terms set forth herein, and within the time stipulated in each individual Task Order, all the services articulated in the CONSULTANT's scope of work ("Services"), which may be more particularly described in a Task Order issued pursuant to this AGREEMENT. The PARTIES agree if there is a proposal or similar document that the terms of this AGREEMENT shall be controlling over any of the terms contained within the CONSULTANT's proposal or similar document.

2. Contract Documents. The following contract documents are considered part of the final Agreement, in order of precedence:
  - a. All properly executed Task Orders, and any Exhibits thereto.
  - b. The final executed AGREEMENT between the CONSULTANT and WESTED.
  - c. Request for Proposal ("RFP") No. \_\_\_ dated \_\_\_\_\_, 2017, as originally released, with Proposal Forms, Appendices and any addenda thereto.
  - d. CONSULTANT's proposal dated \_\_\_\_\_, 2017, including all addenda and attachments, but not including any provisions which do not exceed the minimum standards set forth in the RFP.
  
3. Contract Term. The term of this AGREEMENT shall begin \_\_\_\_\_, 20\_\_ and shall end \_\_\_\_\_, 20\_\_, in accordance with the schedule. This contract is for a "Base Period" of three (3) years. The WESTED has the option to extend the terms of the contract for two (2) additional periods consisting of 12 months each. This agreement will not exceed five (5) years total. The time for completing the Services set forth in a Task Order shall be established in each individual Task Order issued to CONSULTANT.
  
4. Liquidated Damages. Time is of the essence. Should CONSULTANT fail to complete any part of its Services required pursuant to a Task Order within the time specified in the individual Task Order, the WESTED will suffer damage, the amount of which is difficult, if not impossible, to ascertain and, pursuant to the authority of Government Code section 53069.85, the WESTED shall therefore be entitled to \$\_\_\_\_\_ per calendar day as liquidated damages for each calendar day or part thereof that actual completion extends beyond the time specified in a Task Order.
  
5. Representations and Warranties. CONSULTANT makes the following certifications, representations, and warranties for the benefit of the WESTED and CONSULTANT acknowledges and agrees that the WESTED, in

deciding to engage CONSULTANT pursuant to this AGREEMENT, is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this AGREEMENT and the course of CONSULTANT's engagement hereunder:

- a. CONSULTANT is qualified in all respects to provide to the WESTED all of the Services contemplated by this AGREEMENT and, to the extent required by any applicable laws, CONSULTANT has all such licenses and/or governmental approvals as would be required to carry out and perform, for the benefit of the WESTED, such Services as are called for hereunder.
  - b. CONSULTANT, in providing the Services and in otherwise carrying out its obligations to the WESTED under this AGREEMENT, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including workers' compensation and equal protection and non-discrimination laws. CONSULTANT shall be liable for all violations of such laws and regulations in connection with Services.
6. Standard of Care. The CONSULTANT will perform its Services hereunder in a professional manner, using the degree of care and skill ordinarily exercised by, and consistent with, the current professional practices and standards of a professional practicing in California. The CONSULTANT will furnish, at its expense, those Services that are set forth in this AGREEMENT and represents that the Services set forth in said EXHIBIT are within the technical and professional areas of expertise of the CONSULTANT or any sub-CONSULTANT the CONSULTANT has engaged or will engage to perform the Service(s). The WESTED shall request in writing if the WESTED desires the CONSULTANT to provide Services in addition to, or different from, the Services described. The CONSULTANT shall advise the WESTED in writing of any Services that, in the CONSULTANT's opinion, lie outside of the technical and professional expertise of the CONSULTANT.
7. Reports. The CONSULTANT shall provide any required DSA reports, certifications or forms for each of the DSA application numbers included under this PROJECT within ten (10) days of that specific DSA application number PROJECT completion.
8. Employees. CONSULTANT warrants that all of CONSULTANT's employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. CONSULTANT further represents that it, its employees and subcontractors or sub-CONSULTANTS have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any of

CONSULTANT's employees who are determined by WESTED to be uncooperative, incompetent, a threat to the adequate or timely completion of the PROJECT, a threat to the safety of persons or property, or any of CONSULTANT's employees who fail or refuse to perform the Services in a manner acceptable to WESTED, shall be promptly removed from the PROJECT by the CONSULTANT and shall not be re-employed to perform any of the Services or to work on the PROJECT.

9. Authorized Changes. The CONSULTANT is not authorized to modify, waive, eliminate, or add any requirement to the PROJECT's specifications or other contract documents, nor to approve or accept any portion of the construction work, unless specifically authorized in writing by the WESTED or its authorized representative. The CONSULTANT shall not have the right to reject work or the right to stop work, except for such periods as may be required to conduct sampling, testing or inspection of work covered by this AGREEMENT.

## ARTICLE II

### PAYMENTS TO CONSULTANT

1. Basic Services: CONSULTANT shall not be entitled to any compensation for any services unless and until a written Task Order has been issued by the WESTED. Upon issuance of such a Task Order, CONSULTANT agrees to perform basic Services provided by this AGREEMENT and the Task Order, and WESTED agrees to pay CONSULTANT for such Services in accordance with the fee schedule set forth in Exhibit "A" hereto and confirmed as a not to exceed price in the Task Order. Compensation for Additional Services shall be dependent upon CONSULTANT's compliance with the provisions outlined in ARTICLE IV below and shall be calculated in accordance with the rates set forth.
2. Reimbursable Costs/Expenses: The WESTED recognizes that certain costs and expenses associated with the Services performed are reimbursable to the CONSULTANT. Provided that the CONSULTANT obtains the WESTED's prior written approval, costs and expenses will be reimbursed to the CONSULTANT in accordance with this ARTICLE. The WESTED's prior written authorization is an express condition precedent to any reimbursement to the CONSULTANT of such costs and expenses, and no claim for any additional compensation or reimbursement shall be valid absent such prior written approval by the WESTED and calculated in accordance with the rates set forth. The CONSULTANT's mileage and travel time shall not be considered as an allowable reimbursable expense. The descriptive categories of expenses that may be considered for reimbursement are as follows, and any other reimbursable expenses must be approved in writing by the WESTED:

1. Approved reproduction of reports and/or other documents in excess of the copies required by this AGREEMENT;
  2. Fees advanced for securing approval of authorities in connection with the Services rendered pursuant to this AGREEMENT;
  3. Cost of UPS, Federal Express, and other deliverables; and
  4. Cost of sub-CONSULTANTs hired by CONSULTANT with prior written approval of WESTED.
3. The CONSULTANT shall submit invoices monthly to the WESTED for the fees incurred during the billing period and reimbursable expenses (if any). Separate invoices shall be submitted for each PROJECT and Service Authorization Order. Invoice shall be processed within thirty (30) days upon receipt and approval by WESTED of an invoice, in triplicate, showing services rendered for the period covered by the invoice.
  4. All invoices submitted must contain the following certification statement: "I certify that payment requested is for appropriate purposes and in accordance with the provisions of the Contract." All invoices must be signed by CONSULTANT's Chief Financial Officer or designee.
  5. CONSULTANT certifies that CONSULTANT has not and will not receive pay for the same services or days of Service by any other public agency.
  6. WESTED shall not be liable to CONSULTANT for any costs or expenses paid or incurred by CONSULTANT in performing services for WESTED, unless otherwise specifically stated in the Contract.
  7. The WESTED may withhold, or on account of subsequently discovered evidence, nullify the whole or a part of any payment to such extent as may be necessary to protect the WESTED from loss, including costs and attorneys' fees, on account of: (1) defective or deficient work product not remedied; (2) failure of the CONSULTANT to make payments properly to its employees or sub-CONSULTANTs; or (3) failure of CONSULTANT to perform its services in a timely manner so as to conform to PROJECT schedule.

### **ARTICLE III**

#### **TERMINATION**

1. This AGREEMENT may be terminated by either PARTY upon thirty (30) days written notice to the other PARTY in the event of an uncured substantial failure of performance by such other PARTY, including

insolvency of CONSULTANT; or if the WESTED should decide to abandon or indefinitely postpone the PROJECT.

2. In the event of a termination based upon abandonment or postponement by WESTED, the WESTED shall pay to the CONSULTANT for all Services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement plus any sums due the CONSULTANT for Board approved Additional Services. In ascertaining the Services actually rendered hereunder up to the date of termination of this AGREEMENT, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings, reports and/or other documents whether delivered to the WESTED or in the possession of the CONSULTANT. In the event termination is for a substantial failure of performance, all damages and costs associated with the termination, including increased CONSULTANT and replacement CONSULTANT costs, shall be deducted from payments to the CONSULTANT.
3. In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience in accordance with Paragraph 4 below, and CONSULTANT shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by CONSULTANT.
4. This AGREEMENT may be terminated without cause by WESTED upon thirty (30) days written notice to the CONSULTANT. In the event of a termination without cause, the WESTED shall pay CONSULTANT for all Services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination plus any sums due the CONSULTANT for Board approved Additional Services.
5. In the event of a dispute between the PARTIES as to performance of the work or the interpretation of this AGREEMENT, or payment or nonpayment for work performed or not performed, the PARTIES shall attempt to resolve the dispute. Pending resolution of this dispute, CONSULTANT agrees to continue the work diligently to completion. If the dispute is not resolved, CONSULTANT agrees it will neither rescind the AGREEMENT nor stop the progress of the work, but CONSULTANT's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the PROJECT has been completed, and not before. The PARTIES may agree in writing to submit any dispute between the PARTIES to mediation and/or arbitration.

**ARTICLE IV**  
**ADDITIONAL SERVICES**

1. CONSULTANT shall notify the WESTED in writing of the need for Additional Services required due to circumstances beyond the CONSULTANT's control. CONSULTANT shall obtain written authorization from the WESTED before rendering any Additional Services. The WESTED may also require CONSULTANT to perform additional services which are, in the WESTED's discretion, necessary. Compensation for all Additional Services shall be negotiated and approved in writing by the WESTED before CONSULTANT performs such Additional Services. CONSULTANT shall not be entitled to any compensation for performing Additional Services that are not previously approved by the WESTED in writing. Additional Services may include:
  1. Making material revisions in reports or other documents when such revisions are required by the enactment or revision of laws, rules or regulations subsequent to the preparation and completion of such documents;
  2. Preparing reports and other documentation and supporting data, and providing other Services in connection with PROJECT modifications required by causes beyond the control of the CONSULTANT which are not the result of the direct or indirect negligence, errors or omissions on the part of CONSULTANT;
  3. If the WESTED requests additional shifts to complete the Services articulated where the requests for additional shifts do not arise from the direct or indirect negligence, errors or omissions on the part of CONSULTANT, the CONSULTANT's compensation is expressly conditioned on the lack of fault of the CONSULTANT; and
  4. Providing any other services not otherwise included in this AGREEMENT or not customarily furnished in accordance with the generally accepted practice in the CONSULTANT's industry.

**ARTICLE V**  
**SUCCESSORS AND ASSIGNS**

1. It is mutually understood and agreed that this AGREEMENT shall be binding upon the WESTED and its successors and upon the CONSULTANT, its partners, successors, executors, and administrators. Neither this AGREEMENT, nor any monies due or to become due thereunder, may be assigned by the CONSULTANT without the written consent and approval of the WESTED.

**ARTICLE VI**  
**AUDIT AND INSPECTION OF RECORDS OF THE CONSULTANT**

1. At any time during the normal business hours and as often as WESTED may deem necessary, CONSULTANT shall make available to WESTED for examination at WESTED's place of business as specified herein, all data, records, investigation reports and all other materials respecting matters covered by this CONSULTANT and CONSULTANT will permit the WESTED to audit, and to make audits of all invoices, materials, payrolls, records of personnel and other data related to all matters covered by this Contract. CONSULTANT shall allow inspection of all work, data, documents, proceedings, and records related to the Contract for a period of four (4) years from the date of final payment under this Contract.

**ARTICLE VII**  
**REPORTS AND/OR OTHER DOCUMENTS**

1. The reports and/or other documents that are prepared, reproduced, maintained and/or managed by the CONSULTANT or CONSULTANT's CONSULTANTS in accordance with this AGREEMENT, shall be and remain the property of the WESTED (hereinafter "PROPERTY"). The WESTED may provide the CONSULTANT with a written request for the return of its PROPERTY at any time. Upon CONSULTANT's receipt of the WESTED's written request, CONSULTANT shall return the requested PROPERTY to the WESTED within seven (7) calendar days. Failure to comply with the requirements in this Article shall be deemed a material breach of this AGREEMENT.

**ARTICLE VIII**  
**INDEMNITY AND INSURANCE**

1. Indemnification. To the fullest extent permitted by law, CONSULTANT shall defend (with counsel of WESTED's choosing), indemnify and hold the WESTED, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of CONSULTANT, its officials, officers, employees, subcontractors, CONSULTANTS or agents in connection with the performance of the CONSULTANT's Services, the PROJECT or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses, except for liability resulting from the sole or active negligence, or willful misconduct of the WESTED, its officers, employees, or agents.

CONSULTANT shall reimburse WESTED and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. CONSULTANT's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the WESTED, its directors, officials officers, employees, agents, or volunteers. Notwithstanding the foregoing, to the extent CONSULTANT's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT. CONSULTANT agrees to waive all rights of subrogation against the WESTED.

1. THE PARTIES UNDERSTAND AND AGREE THAT ARTICLE VIII, PARAGRAPH 1 OF THIS AGREEMENT SHALL BE THE SOLE INDEMNITY, AS DEFINED BY CALIFORNIA CIVIL CODE § 2772, GOVERNING THIS AGREEMENT. ANY OTHER INDEMNITY THAT MAY BE ATTACHED TO THIS AGREEMENT AS AN EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE PARTIES.
2. ANY ATTEMPT TO LIMIT THE CONSULTANT'S LIABILITY TO THE WESTED IN AN ATTACHED EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE WESTED AND THE CONSULTANT.
2. Insurance. CONSULTANT shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to WESTED which will protect CONSULTANT and WESTED from claims which may arise out of or result from CONSULTANT's actions or inactions relating to the AGREEMENT, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:
  1. The CONSULTANT shall carry Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California. However, such amount shall not be less than ONE MILLION DOLLARS (\$1,000,000).
  2. Commercial general liability insurance with limits of not less than TWO MILLION DOLLARS (\$2,000,000) and automobile liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) for bodily injury and property damage liability, per occurrence, including coverage for the following:
    - i. Owned, non-owned and hired vehicles;
    - ii. Blanket contractual;

- iii. Broad form property damage;
  - iv. Products/completed operations; and
  - v. Personal injury.
3. Professional liability insurance (errors and omissions), including contractual liability, with limits of ONE MILLION DOLLARS (\$1,000,000), per claim. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least five (5) years thereafter and/or at rates consistent with the time of execution of this AGREEMENT adjusted for inflation. Failure to maintain professional liability insurance is a material breach of this AGREEMENT and grounds for immediate termination.
  4. Valuable Document Insurance: The CONSULTANT shall carry adequate insurance on all reports, drawings, specifications, record drawings and/or other documents as may be required to protect the WESTED in the amount of its full equity in those reports, drawings, specifications, record drawings and/or other documents, and shall file with the WESTED a certificate of that insurance. The cost of that insurance shall be paid by the CONSULTANT, and the WESTED shall be named as an additional insured.
  5. Each policy of insurance required in Paragraph b above shall name WESTED and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of CONSULTANT hereunder, such policy is primary and any insurance carried by WESTED is excess and non-contributory with such primary insurance; shall state that written notice shall be given to WESTED prior to cancellation; and, shall waive all rights of subrogation. CONSULTANT shall notify WESTED in the event of material change in, or failure to renew, each policy. Prior to commencing work, CONSULTANT shall deliver to WESTED certificates of insurance as evidence of compliance with the requirements herein. In the event CONSULTANT fails to secure or maintain any policy of insurance required hereby, WESTED may, at its sole discretion, secure such policy of insurance in the name of and for the account of CONSULTANT, and in such event CONSULTANT shall reimburse WESTED upon demand for the cost thereof.
  6. In the event that CONSULTANT subcontracts any portion of CONSULTANT's duties, CONSULTANT shall require any such sub-CONSULTANT to purchase and maintain insurance coverage for the types of insurance referenced in ARTICLE VIII, Paragraphs 2a, b, c, and d above in amounts which are appropriate with respect to that sub-CONSULTANT's part of work which shall in no event be less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per occurrence.

**ARTICLE IX**  
**MISCELLANEOUS**

1. Performance and Payment Bonds. The Services under this AGREEMENT shall be assigned and bonded on a Task Order by Task Order basis. If required by law or requested by the WESTED, upon the WESTED'S issuance of a Task Order CONSULTANT shall furnish a surety bond in an amount equal to one hundred percent (100%) of the Task Order price as security for faithful performance of this AGREEMENT and shall furnish a separate bond in an amount at least equal to one hundred percent (100%) of the Task Order price as security for payment of persons performing labor and furnishing materials in connection with the Task Order.
  
2. Control and Payment of CONSULTANT and its Subordinates. CONSULTANT, in the performance of this AGREEMENT, shall be and act as an independent contractor. CONSULTANT understands and agrees that CONSULTANT and all of CONSULTANT's employees shall not be considered officers, employees or agents of the WESTED, and are not entitled to benefits of any kind or nature normally provided employees of the WESTED and/or to which WESTED's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. CONSULTANT assumes the full responsibility for the acts and/or omissions of CONSULTANT's employees or agents as they relate to the Services to be provided under this AGREEMENT. CONSULTANT shall assume full responsibility for payment of any applicable prevailing wages and all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective CONSULTANT's employees.
  
3. Prevailing Wages: If applicable and required under California Labor Code section 1720 *et seq.*, Contractor shall pay, and shall cause all sub-consultants and/or subcontractors of every tier to pay, not less than the specified prevailing wage rates, to the extent applicable, to all workers employed to perform work or Services under this AGREEMENT. CONSULTANT shall defend, indemnify and hold WESTED, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the CONSULTANT and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor, and debarment of contractors and subcontractors.
  
4. Registration. If the services are being performed as part of an applicable "public works" or "maintenance" project, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the CONSULTANT and

all subconsultants must be registered with the Department of Industrial Relations (“DIR”). CONSULTANT shall maintain registration for the duration of the project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be CONSULTANT’S sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

5. Installation Requirements. As may be further described and set forth in a Task Order, all installation, integration, and other potentially public works construction activities which may be contemplated by CONSULTANT, shall be performed in accordance with all applicable, laws, rules, and regulations of the WESTED.
  
6. Ownership of Materials and Confidentiality.
  - (a) All materials and data, including but not limited to, data on magnetic media and any materials and data required to be made or kept pursuant to federal, state or local laws, rules or regulations, prepared or collected by CONSULTANT pursuant to this Agreement, shall be the sole property of the WESTED, except that CONSULTANT shall have the right to retain copies of all such documents and data for its records. WESTED shall not be limited in any way in its use of such materials and data at any time, provided that any such use not within the purposes intended by this Agreement shall be at WESTED's sole risk and provided that CONSULTANT shall be indemnified against any damages resulting from such use, including the release of this material to third parties for a use not intended by this Agreement.
  
  - (b) All such materials and data shall be provided to the WESTED, or such other agency or entity as directed by WESTED or required by law, rule or regulation, immediately upon completion of the term of this Agreement as directed by WESTED. Should WESTED wish to obtain possession of any such materials or data during the term of this Agreement, it shall make its request in writing. Such information shall be provided to the WESTED within forty-eight (48) hours of its request.
  
7. No Third Party Beneficiaries. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of any third party against either the WESTED or CONSULTANT.
  
8. Conflicting Provisions. THIS AGREEMENT SHALL NOT INCLUDE OR INCORPORATE THE TERMS OF ANY PROPOSAL, GENERAL CONDITIONS, CONDITIONS, MASTER AGREEMENT OR ANY OTHER BOILERPLATE TERMS OR FORM DOCUMENTS PREPARED BY THE CONSULTANT. THE ATTACHMENT OF ANY SUCH DOCUMENT TO THIS

AGREEMENT SHALL NOT BE INTERPRETED OR CONSTRUED TO INCORPORATE SUCH TERMS INTO THIS AGREEMENT UNLESS THE WESTED APPROVES OF SUCH INCORPORATION IN A SEPARATE WRITING SIGNED BY THE WESTED. ANY REFERENCE TO SUCH BOILERPLATE TERMS AND CONDITIONS IN THE PROPOSAL OR QUOTE SUBMITTED BY THE CONSULTANT SHALL BE NULL AND VOID AND HAVE NO EFFECT UPON THIS AGREEMENT. PROPOSALS, QUOTES, STATEMENT OF QUALIFICATIONS AND OTHER SIMILAR DOCUMENTS PREPARED BY THE CONSULTANT MAY BE INCORPORATED INTO THIS AGREEMENT AS **EXHIBIT "A"** BUT SUCH INCORPORATION SHALL BE STRICTLY LIMITED TO THOSE PARTS DESCRIBING THE CONSULTANT'S SCOPE OF WORK, RATE AND PRICE SCHEDULE AND QUALIFICATIONS.

9. Consultation with Legal Counsel. Each of the PARTIES have had the opportunity to, and have to the extent each deemed appropriate, obtained legal counsel concerning the content and meaning of this AGREEMENT. Each of the PARTIES agrees and represents that no promise, inducement or agreement not herein expressed has been made to effectuate this AGREEMENT. This AGREEMENT represents the entire AGREEMENT between the WESTED and CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be amended or modified only by an agreement in writing signed by both the WESTED and the CONSULTANT.
10. Time is of the Essence. Time is of the essence with respect to all provisions of this AGREEMENT.
11. Attorneys' Fees. If either PARTY becomes involved in litigation arising out of this AGREEMENT or the performance thereof, each PARTY shall bear its own litigation costs and expenses, including reasonable attorney's fees.
12. Exhibits and Recitals. All exhibits and recitals referenced herein and attached hereto shall be deemed incorporated into and made a part of this AGREEMENT by each reference as though fully set forth in each instance in the text hereof with the exception of those documents or provisions that are subject to the exclusions specifically set forth in this AGREEMENT.
13. Interpretation. This AGREEMENT shall be liberally construed to effectuate the intention of the PARTIES with respect to the transaction described herein. In determining the meaning of, or resolving any ambiguity with respect to any word, phrase or provision of this AGREEMENT, neither this AGREEMENT nor any uncertainty or ambiguity herein will be construed or resolved against either party (including the PARTY primarily responsible for drafting and preparation of this AGREEMENT), under any rule of construction or otherwise, it being expressly understood and agreed that the

PARTIES have participated equally or have had equal opportunity to participate in the drafting hereof.

14. Non-Waiver. None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is expressly specified in writing.
15. Counterparts. This AGREEMENT may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, all of which shall be sufficient evidence of this AGREEMENT.
16. Confidentiality and Use of Information:
  - (a) CONSULTANT shall hold in trust for the WESTED, and shall not disclose to any person, any confidential information. Confidential information is information which is related to the WESTED's research, development, trade secrets and business affairs; but does not include information which is generally known or easily ascertainable by nonparties through available public documentation.
  - (b) CONSULTANT shall advise the WESTED of any and all materials used, or recommended for use by CONSULTANT to achieve the project goals, that are subject to any copyright restrictions or requirements. In the event CONSULTANT shall fail to so advise the WESTED and as a result of the use of any programs or materials developed by CONSULTANT under this Contract the WESTED should be found in violation of any copyright restrictions or requirements, or the WESTED should be alleged to be in violation of any copyright restrictions or requirements, CONSULTANT agrees to indemnify, defend and hold harmless, WESTED against any action or claim brought by the copyright holder.
  - (c) Notwithstanding the above requirements, to the extent any records or documents associated with the CONSULTANT's services and/or the project are or become public records, they shall be subject to disclosure pursuant to the Public Records Act and applicable California law.
17. Governing Law: This AGREEMENT shall be governed by the laws of the State of California.
18. Severability: If any portion of this AGREEMENT is held as a matter of law to be unenforceable, the remainder of this AGREEMENT shall be enforceable without such provisions.
19. Notices: All notices or demands to be given under this AGREEMENT by either PARTY to the other shall be in writing and given either by: (a) personal service; or (b) by U.S. Mail, mailed either by registered, overnight, or certified mail, return receipt requested, with postage prepaid. Service shall be

considered given when received if personally served or if mailed on the fifth day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either PARTY may be changed by written notice given in accordance with the notice provisions of this Paragraph. At the date of this AGREEMENT, the addresses of the PARTIES are as follows:

To WESTED:

WestEd  
4665 Lampson Ave.  
Los Alamitos, CA 90720  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

To the CONSULTANT:

Firm:  
Attn:  
Address:  
Address:  
Phone:  
Fax:

20. Conflict of Interest. For the term of this Agreement, no member, officer or employee of WESTED, during the term of his or her service with WESTED, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
21. Equal Opportunity Employment. CONSULTANT represents that it is an equal opportunity employer and it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. CONSULTANT shall also comply with all relevant provisions of WESTED's Minority Business Enterprise program, if any, or other related programs or guidelines currently in effect or hereinafter enacted. CONSULTANT must make a good faith effort to contact and utilize DVBE subcontractors or sub-CONSULTANTS and suppliers in securing bids for performance of the Agreement and shall be required to certify its good faith efforts towards retaining DVBE subcontractors or sub-CONSULTANTS and suppliers and identify DVBE firms utilized in performance of the Agreement.
22. Tobacco Prohibited: any tobacco use (smoking, chewing, etc.) by anyone, is prohibited at all times on any WESTED property.
23. Mandatory Dress. Appropriate dress is mandatory. Therefore, tank tops, cut-offs and shorts are not allowed. Additionally, what is written or pictured on clothing must comply with the requirements of acceptable language, no profanity or other offensive language shall be permitted.
24. Images: If applicable, the CONSULTANT is prohibited from capturing on any visual medium images of any property, logo, student, or employee of the

WESTED, or any image that represents the WESTED without express written consent from the WESTED.

**ARTICLE X**

**ENTIRE AGREEMENT**

1. All of the AGREEMENT between the PARTIES is included herein, and no warranties expressed or implied, representations, promises, or statements have been made by either PARTY unless endorsed hereon in writing, and no charges or waiver of any provision hereof shall be valid unless made in writing and executed in the same manner as the AGREEMENT.
2. Neither amendments to nor modifications of this AGREEMENT shall be effective unless signed by officials of the CONSULTANT and the WESTED having authority equal to or greater than that of the officials signing this AGREEMENT. The WESTED and the CONSULTANT hereby agree to the full performance of the covenants contained herein.

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

**INSERT FIRM NAME HERE (OR REMOVE)**

Name:  
SS#/Federal Tax ID:  
Address:  
City/State/Zip:  
Telephone:  
Fax:

**WESTED**

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

**Signature:** \_\_\_\_\_

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

**Signature:** \_\_\_\_\_

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

**EXHIBIT "A"**  
**(Compensation-Fee Schedule/Scope of Services)**

1. **Compensation for Basic Services:**

**EXHIBIT "B"  
(Task Order)**

**Task Order No.:** \_\_\_\_\_

**Contract:** \_\_\_\_\_

**Site(s):** \_\_\_\_\_

**Consultant:** \_\_\_\_\_

**The Consultant is hereby authorized to perform the following work/services subject to the provisions of the Contract identified above:**

**[Insert description of work/services]**

**Attachments:** \_\_\_\_\_

**Dollar Amount of Task Order:** \_\_\_\_\_

**Required Completion Date:** \_\_\_\_\_

The undersigned Consultant hereby agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted above, and perform all services for the Work/Services above specified in accordance with the Contract identified above and will accept as full payment therefore the amount shown above, which constitutes full settlement, accord and satisfaction with respect to any and all pending or future claims for costs and extensions of time in connection with the Work/Services covered by this Task Order.

The Consultant understands and hereby acknowledges that if it fails to complete the Work/Services covered by this Task Order not later than the Required Completion Date, then liquidated damages may be assessed in accordance with the terms of the Contract.

**WESTED**

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

**Signature:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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

**Acknowledged and Accepted By:**

**[Insert name of Consultant]**

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

**Signature:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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

**(Consultant to return signed copy of this Task Order to WESTED)**