

REQUEST FOR PROPOSALS (RFP)

**Financial Management and Bond Accounting
Software
RFP #20/21-002**

RESPONSES DUE: June 8, 2021

**LA MESA-SPRING VALLEY SCHOOL DISTRICT
ATTN: VALERIE RANUM, DIRECTOR OF BUSINESS SERVICES
4750 DATE AVENUE
LA MESA, CA 91942**

**RFP FOR TECHNOLOGY/SOFTWARE –
FINANCIAL MANAGEMENT AND BOND ACCOUNTING SOFTWARE**

TABLE OF CONTENTS

	<u>Page</u>
NOTICE CALLING FOR PROPOSALS	3
RFP FOR TECHNOLOGY/SOFTWARE.....	4
I. BACKGROUND	4
II. GENERAL INFORMATION	4
A. <u>Limitations</u>	4
B. <u>Restrictions on Lobbying and Contacts</u>	5
C. <u>Schedule Summary</u>	4
III. SCOPE OF SERVICES	5
A. <u>District Needs/Desired Software Capabilities</u>	5
B. <u>Instructions And Conditions</u>	6
IV. EVALUATION CRITERIA.....	9
Att. "1" NON-COLLUSION DECLARATION	12
Att. "2" FORM OF AGREEMENT	13

NOTICE CALLING FOR PROPOSALS
RFP FOR TECHNOLOGY/SOFTWARE
FINANCIAL MANAGEMENT AND BOND ACCOUNTING SOFTWARE

NOTICE IS HEREBY GIVEN that the La Mesa-Spring Valley School District, acting by and through its Board of Education, hereinafter referred to as "District" will receive up to, but not later than, the below-stated proposal deadline, sealed proposals at the place identified above for the award of a contract for RFP #20/21-002: FINANCIAL MANAGEMENT AND BOND ACCOUNTING SOFTWARE.

Proposal Deadline: June 8, 2021 2:00 p.m. PST
(Date) (Time)

Place of Proposal Receipt: La Mesa-Spring Valley School District
Attn: Valerie Ranum, Director of Business Services
4750 Date Avenue
La Mesa, CA 91942
valerie.ranum@lmsvschools.org

Any proposals received after the above date and time will not be accepted and will be returned unopened.

Each proposal must conform and be responsive to the requirements set forth in this RFP.

The District reserves the right to waive any informalities or irregularities in received proposals. Further, the District reserves the right to reject any and all proposals and to negotiate contract terms with one or more respondent firms for one or more of the items identified within the RFP scope. The District retains the sole discretion to determine issues of compliance and to determine whether a respondent's proposal is responsive.

PROPOSER IS RESPONSIBLE FOR READING THIS RFP IN ITS ENTIRETY.

If you have any questions regarding this RFP please contact Valerie Ranum at valerie.ranum@lmsvschools.org before 2:00 P.M. on June 1, 2021. Answers will be circulated and posted on the District website by 10:00 A.M. on June 3, 2021.

Name of Paper: San Diego Union Tribune
Published Dates: May 17, 2021 and May 24, 2021

**RFP FOR TECHNOLOGY/SOFTWARE
FINANCIAL MANAGEMENT AND BOND ACCOUNTING SOFTWARE**

I. BACKGROUND

La Mesa-Spring Valley School District (“District”) serves more than 11,000 K-8 students within 21 schools. The District is the 4th largest elementary school district in San Diego County. Focusing on the “whole child,” the District’s mission is to nurture the character and heart of children as well as to educate.

The District is pleased to issue this Request for Proposals (“RFP”) for the procurement of financial management and bond accounting software to be used in connection with the District’s Measure V bond program, and shall include all software, and all installation, training and components necessary to utilize the software, such as the software application or – if web based – access protocols, and equipment, material, and any labor to complete training and installation.

This process is a Request for Proposal/Evaluation/Competitive Negotiation in accordance with Public Contract Code Section 20118.2. The District reserves the right to negotiate on any or all components of each proposal submitted. The District’s award of a contract, if at all, will be made in accordance with Public Contract Code section 20118.2 and will be based on the District’s understanding of the RFP respondent’s (“Proposer”) respective financing, performance reliability of the software, support logistics, standardization with the District’s existing financial management system, fitness of the purchase, manufacturer’s warranties, and proposed price, as well as the overall thoroughness of the proposals and responsiveness to the RFP and during the RFP process.

II. GENERAL INFORMATION

A. Schedule Summary

Date	Event
May 17th & May 24th, 2021	RFP issued to public.
June 1, 2021 by 2:00 p.m.	Deadline for submitting questions to District.
June 3, 2021 by 10:00 a.m.	Date by which District will post responses to questions.
June 8, 2021 by 2:00 p.m.	Deadline to submit proposals.
Week of June 14, 2021	Anticipated interview(s) and demonstration(s) (if scheduled by District).
July 13, 2021	Board approval of contract.

The District reserves the right to change the dates on the schedule without prior notice at its sole discretion.

B. Limitations

This RFP is not a formal request for bids, or an offer by the District to contract with any party responding to this RFP. The District reserves the right to reject any and all responses, and likewise, the District reserves the right to contract with any entity responding to this RFP. The District also reserves the right to amend this RFP as necessary. The District makes no representation that participation in the RFP process will lead to an award of contract or any consideration whatsoever. The District shall in no event be responsible for the cost of preparing a response to this RFP. The awarding of a contract, if at all, is at the sole discretion of the District.

The District reserves the right to reject any or all proposals, to waive any irregularities or informalities not affected by law, to evaluate each proposal submitted, and to award contracts, if any, according to the proposal(s) which best serves the interest of the District at a reasonable cost to the District. Any contract(s) resulting from this RFP, however, will be made according to the District's form of the agreement attached to this RFP as **Attachment "2"**.

The Proposer's proposal, and any other supporting materials submitted to the District in response to this RFP will not be returned and will become the property of the District unless portions of the materials are designated as proprietary at the time of submittal, and are specifically requested to be returned. Vague designations and/or blanket statements regarding entire pages or documents are insufficient and will not bind the District to protect the designated matter from disclosure. Pursuant to *Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, proposals shall be held confidential by the District and shall not be subject to disclosure under the California Public Records Act until after either: (1) the District and the successful Proposer have completed negotiations and entered into an agreement, or (2) the District has rejected all responses. Furthermore, the District will have no liability to the Proposer or other party as a result of any public disclosure of any proposal package.

C. Restrictions on Lobbying and Contacts

From the period beginning on the date of the issuance of this RFP and ending on the date of the award of the contract, no person, or entity responding to this RFP, nor any officer, employee, representative, agent, or consultant representing such a person or entity shall contact through any means or engage in any discussion regarding this RFP, the evaluation or selection process, or the award of the contract(s) with any member of the District's Governing Board ("Board"), selection committee members, or with any employee of the District, except for clarifications and questions as described herein. Any such contact shall be grounds for the disqualification of the entity submitting a proposal.

III. SCOPE OF SERVICES

A. District Needs/Desired Software Capabilities

The District's needs include financial and bond program accounting software, and all installation, training, and components necessary to utilize the software, such as the software application or, if web based, access protocols, and equipment, material, and any labor to complete training and installation. However, installation services, if any, shall not include construction services.

The District will use the software for a variety of fiscal and accounting management and compliance activities, including but not limited to:

- a. *Building program and project budgets;*
- b. *Aligning revenue and expenditures with District accounts;*
- c. *Tracking and managing revenue and fund demand;*
- d. *Tracking and managing expenditures;*
- e. *Reporting to the District's Citizens' Bond Oversight Committee and Governing Board;*
- f. *Maintaining records of budget changes;*
- g. *Managing and recording all financial transactions related to the capital facilities improvement program;*
- h. *Forecasting project and program expenditures to completion;*
- i. *Tracking performance and ratios of budgets and expenditures; and*
- j. *Other financial tracking, managing, forecasting and reporting as related to the management of public schools and capital improvement programs in the State of California.*

Therefore, the District is interested in software that is:

- Capable of supporting the above-listed tasks (a-j);
- Compatible with the District's existing financial and technology systems/standardization;
- Easy to install and maintain (e.g. software updates);
- Accompanied by support logistics;
- User-friendly;
- Cost-effective, including life-cycle costs;
- Readily available/prompt delivery;
- Performance reliable;
- Includes manufacturer's warranties;
- Other considerations identified in "SUCCESSFUL CANDIDATES" section of the RFP.

B. Instructions And Conditions

1. Preparation of Proposal and Proposal Contents

Proposers must submit an original proposal. All proposals shall address the following items in the order listed below. The proposal is to provide information for the District to determine, in its sole discretion, whose response represents the best value considering District needs, technical issues, cost and other factors described in more detail in the "SUCCESSFUL CANDIDATES" section below.

In order to address the needs of this procurement, the District welcomes vendors to work cooperatively in presenting integrated solutions. Vendor team arrangements may be desirable to enable the companies involved to complement each other's capabilities, while offering the best combination of performance, cost, and delivery under this RFP. The District will entertain proposals with such arrangements, provided that: (1) the arrangements are identified and relationships fully disclosed, and (2) a prime vendor is designated that will be fully responsible for all contract performance. The District retains sole discretion to determine whether such arrangements meet those criteria.

- **COVER LETTER & EXECUTIVE SUMMARY** – Include: 1) a brief high-level synopsis of Proposer's proposal, 2) an affirmation that Proposer will complete all services on or before the District's required completion date, 3) acknowledgement of receipt of any and all RFP addenda (if any), and 4) other

appropriate items. The proposal must bear the signature of a person duly authorized to sign the proposal on behalf of the Proposer and reference this RFP and accept its terms and conditions or clearly and conspicuously indicate any exceptions. Proposer shall also include all objections and proposed revisions to the District's form of the agreement attached to this RFP as **Attachment "2"** for the District's consideration.

- **SOFTWARE** – Include description of the software and specifications, and details regarding its delivery, installation, maintenance, or any other relevant information. Explain the features of the software and how it meets the District's needs, technical issues, cost and other factors described in more detail below in the "SUCCESSFUL CANDIDATES" section.
- **DETAILED AND ITEMIZED PRICING** – Include a fee and cost breakdown including licensing fees, labor (if any), equipment, materials, any travel expenses, or any other fees or costs.
- **REFERENCES** – Provide three (3) current references for other California school districts for which you have performed similar work and/or software, including: contact name, entity, address, telephone number, scope of services/software provided, date services/software were provided.
- **COMPANY OVERVIEW** – Provide the following for your company:
 - a. Official registered name (corporation, DBA, partnership, etc.), address, main telephone number, toll-free numbers, and facsimile numbers.
 - b. Key contact name, title, address (if different from above address), direct telephone and fax numbers.
 - c. Person authorized to contractually bind the organization for any proposal against this RFP.
 - d. Brief history, including year established and number of years your company has been offering the service of the proposal.
 - e. Identify any subcontractors, subconsultants, or vendor relationships applicable to this RFP.
- **REQUIRED ATTACHMENTS** - Proposers shall execute and submit with any proposal/offer the **Attachment "1" - Non-Collusion Declaration**.

Note: the party, if any, selected to contract with the District will be expected to complete Fingerprinting/Criminal Background Investigation Certification, Workers Compensation Certification, and any other applicable certifications attached to the District's form of agreement for reference.

2. Proposal Submission

One (1) original, three (3) copies and one (1) digital copy of the proposal shall be sealed together and submitted by not later than the closing date and time. Proposals shall be delivered to the attention of: Valerie Ranum, Director of Business Services at La Mesa-Spring Valley School District, 4750 Date Avenue, La Mesa, CA 91942; email:

valerie.ranum@lmsvschools.org. It is the sole responsibility of the firm submitting the proposal to ensure that it is actually received by the District prior to the deadline time and due date and at the proper location. Unless this RFP is extended by a written addenda, proposals received after the due date and time will not be considered.

Proposals shall be completed in all aspects as required by the instructions herein. A proposal may be rejected if it is conditional or incomplete, or if it contains alterations of form or other irregularities of any kind. A proposal will be rejected if, in the opinion of the District, the information contained therein was intended to mislead the District in the evaluation of the proposal.

The District may request a meeting with the Proposer's representative to request answers and clarifications, or it may request that the Proposer answer specific questions in writing or to make a presentation to the District or to its Governing Board prior to any contract award.

The District may reject any or all proposals, and may waive informalities and minor irregularities in proposals received.

All proposals and materials submitted in response to this RFP shall become the property of the District and shall be considered a Public Record.

After acceptance of the proposal by the District, an agreement between the successful firm and the District will be executed which incorporates the terms and conditions of this RFP.

3. Addenda

Proposers are advised that the District reserves the right to amend this RFP at any time. Amendments to the RFP will be done formally by providing written addenda to all potential Proposers known to have received a copy of the RFP. If in the sole and absolute discretion of the District, the change is of such a nature that additional time is required for Proposer to prepare proposals, the District will change the due date deadline and notify all known Proposers in writing of the revised deadline due date.

Failure to acknowledge in Proposer's cover letter the receipt of any addenda may result in proposal rejection.

4. Modification or Withdrawal of Proposal

A Proposer may modify or withdraw a proposal after submission by written notice of withdrawal and re-submission provided that the proposal withdrawal is prior to the due date deadline specified for submission of proposals.

5. Proposed Deviations

The stated requirements appearing elsewhere in this RFP shall become a part of the terms and conditions of any resulting contract. Any deviations therefrom must be specifically defined and stated clearly. If accepted by the District, in the District's sole discretion, the deviations shall become part of the contract, but such deviations must not be in conflict with the basic nature of this RFP.

Note: Proposers shall **not** submit their standard terms and conditions as exceptions to the RFP Terms and Conditions. Each exception to a District's terms and conditions, including the District's Form of Agreement included in Attachment 2, shall be individually addressed with

specificity. Vague objections to provisions in the District's Form of Agreement without proposed alternate language will not be entertained by the District.

6. Late Proposals

No proposal or proposal modification received after the due date deadline will be considered.

7. Proposal Evaluation

It is anticipated that an agreement will be entered into with the Proposer whose proposal is determined to be in the overall best interest of the District by applying the evaluation criteria established in this RFP.

District staff/a District Proposal Evaluation Committee will determine which, if any, proposal is in the District's overall best interest to accept. A scale of 100 points will be utilized to score the proposals on the criteria identified. During the evaluation, the District may request proposal clarifications, explanations and answers from a Proposer. The District may request a presentation and/or software demonstration, and interview from certain Proposers.

IV. EVALUATION CRITERIA

Proposers are advised that all proposals will be evaluated to determine which proposal is the overall best interest to the District. Accordingly, evaluation will include but not be limited to the following criteria:

- Completion and clarity of proposal.
- The extent to which Proposer's proposal fulfills the District's stated requirements as set forth in this RFP.
- An assessment of Proposer's ability to deliver the indicated software and services in accordance with the specifications of this RFP.
- Proposer's stability, experience, and past performance.
- Fees, cost and overall of Proposer's proposal.
- Availability and commitment to completion date.
- If desired by the District to aid in the facilitation of evaluation, a presentation and/or interview.

A. PHASE 1 – Paper screening

The proposal evaluation will be based on the following:

- 50 percent on how the software capabilities meet the District's needs, including those criteria listed in SUCCESSFUL CANDIDATES section below.
- 30 percent on price and overall cost to District
- 15 percent on software maintenance and/or training
- 5 percent on availability and implementation

B. PHASE 2 – Analysis and Recommendations

Proposers are encouraged to provide cost savings initiatives that can be provided by their companies and implemented by the District.

A final clarification presentation MAY be requested by the District, at which point, the proposers will have a limited time to respond to the committee to answer any questions and concerns, and otherwise demonstrate the software.

Other factors may also be used for the final evaluation as follows: performance reliability, standardization, life-cycle costs, delivery timetables, support logistics, the broadest possible range of competing products and materials available, fitness of purchase, manufacturer's warranties, and similar factors.

V. SUCCESSFUL CANDIDATES

A. Software Solution

The successful candidate will provide an accounting software solution for the District, which will include the following:

- software (or web access protocol), installation services;
- training on software use and optimization;
- software updates and maintenance as necessary;
- software access control based on roles;
- end of program data records in useful format;
- ability to plan, track, manage and report;
- a suitable summary of capabilities;
- project fund sources and budget building, tracking, and management;
- program tracking and reports, including ratios, budget balances, projected expenditures, fund demands;
- alignment of all revenue and expenditures with District chart of accounts;
- financial management across multiple fiscal years, and multiple projects;
- ease of use by personnel, as reflected in standardization or familiarity of user interface and time required for training;
- ease of use by personnel, i.e. user-friendly interface;
- vendor information and contract tracking, payment tracking and management, retentions or withholdings as appropriate;
- reports appropriate for Board updates, auditors, Oversight Committees, general accounting purposes, and strategic management of program and project fund sources, budgets, expenditures and forecasting to completion;
- Other functions as appropriate to public school financial management and capital programs in the State of California.

B. Restrictions on Communications with District Staff

From the issue date of this RFP until a proposer is selected and a contract award is made, Proposers are not allowed to communicate about the subject of the RFP with any District administrator, faculty, staff, or members of the Board except:

- The District's official point of contact to be emailed at: valerie.ranum@lmsvschools.org, or others authorized in writing by the District; or
- District representatives during proposer presentations.

If a violation of this provision occurs, the District reserves the right to reject the Proposer's proposal.

WE THANK YOU FOR YOUR INTEREST!

[REMAINDER OF PAGE INTENTIONALLY BLANK]

ATTACHMENT "1"

**NON-COLLUSION DECLARATION
TO BE EXECUTED BY PROPOSER AND SUBMITTED WITH PROPOSAL
Public Contract Code Section 7106**

The undersigned declares:

I am the ____ of ____, the party making the foregoing proposal.

The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The proposal is genuine and not collusive or sham. The proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham proposal. The proposer has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham proposal, or to refrain from proposing. The proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the proposer or any other proposer, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other proposer. All statements contained in the proposal are true. The proposer has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof, to effectuate a collusive or sham proposal, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____[date], at _____[city], ____[state].

Date: _____

Proposer's Proper Name: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

ATTACHMENT "2"

FORM OF AGREEMENT

[REMAINDER OF PAGE INTENTIONALLY BLANK; EXHIBITS FOLLOW]

**AGREEMENT FOR SOFTWARE AND RELATED SERVICES:
FINANCIAL MANAGEMENT AND BOND ACCOUNTING SOFTWARE**

This Agreement for Software and Related Services ("Agreement") is made and entered into as of the _____ day of _____, 2021, by and between the La Mesa-Spring Valley School District ("District") and _____ ("Vendor"), (together, "Parties").

RECITALS

WHEREAS, Public Contract Code section 20118.2 ("Section 20118.2") authorizes procurement by competitive negotiation of technology, telecommunications, related equipment, software, and services;

WHEREAS, the District's Board made findings on _____, 2021 determining that procurement of financial management and bond accounting software, and related services, complies with Section 20118.2 requirements, thereby authorizing competitive procurement of the same;

WHEREAS, the District subsequently issued a Request for Proposals ("RFP") compliant with Section 20118.2 requirements and engaged in a compliant competitive procurement and evaluation of proposals received;

WHEREAS, Vendor was identified as the best value to the District, consistent with the RFP's evaluation criteria and Section 20118.2;

NOW, THEREFORE, the Parties agree as follows:

TERMS

1. **Software and Related Services.** Vendor shall provide financial management and bond accounting software and related services as further described in **Exhibit A**, attached hereto and incorporated herein by this reference ("Software and Services").
2. **Term.** Vendor shall commence providing Software and Services under this Agreement on _____, 20__, and will diligently perform as required and complete performance by _____, 20__, unless this Agreement is terminated and/or otherwise cancelled prior to that time.
3. **Submittal of Documents.** Vendor shall not commence performance under this Agreement until Vendor has submitted and District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<input checked="" type="checkbox"/>	Signed Agreement
<input checked="" type="checkbox"/>	Workers' Compensation Certification
<input checked="" type="checkbox"/>	Fingerprinting/Criminal Background Investigation Certification
<input checked="" type="checkbox"/>	Insurance Certificates and Endorsements
<input checked="" type="checkbox"/>	W-9 Form
<input type="checkbox"/>	Other: _____

4. **Compensation.** District agrees to pay Vendor for software and services satisfactorily rendered pursuant to this Agreement a total fee not to exceed _____ Dollars (\$_____). District shall pay Vendor according to the following terms and conditions:

4.1. Payment for the Software and Services shall be made for all undisputed amounts based upon the delivery of the work product as determined by District. Payment shall be made within thirty (30) days after Vendor submits an invoice to District for Software and Services actually completed and after District's written approval of the same, or the portion of the Software and Services for which payment is to be made. The schedule of deliverables is as follows:

- 4.1.1. _____
- 4.1.2. _____
- 4.1.3. _____

4.2. The Software and Services shall be performed at the hourly billing rates and/or unit prices included in **Exhibit B**. If hourly billing applies, the itemized invoice shall reflect the hours spent by Vendor in performing pursuant to this Agreement.

- 5. **Expenses.** District shall not be liable to Vendor for any costs or expenses paid or incurred by Vendor in performing under this Agreement.
- 6. **Materials.** Vendor shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete its performance pursuant to this Agreement.
- 7. **Independent Contractor.** Vendor, in the performance of this Agreement, shall be and act as an independent contractor. Vendor represents and warrants that: (A) Vendor is free from the control and direction of District in connection with the provision of the Software and Services, both under the Agreement and in fact; (B) Vendor's Software and Services are outside the usual course of District's business; and (C) Vendor is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Software and Services.

Vendor understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of District, and are not entitled to benefits of any kind or nature normally provided employees of District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Vendor 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 Vendor's employees. By checking the applicable box below, Vendor hereby represents and warrants to District the following:

- Vendor is and shall be a resident of the State of California or is otherwise exempt from withholding. To the extent an exemption is sought, Vendor will provide District with appropriate evidence including, without limitation, FTB Form 590. Vendor shall still be responsible for payment of all state and federal taxes.
- Vendor is not a resident of the State of California or otherwise not exempt from withholding, and Vendor authorizes District to withhold from all payments made to Vendor under this Agreement all taxes required to be withheld by law. (See, e.g., California Revenue & Taxation Code section 18661 et seq.)

[REMAINDER OF PAGE INTENTIONALLY BLANK]

8. Performance of Services.

- 8.1. **Standard of Care.** Vendor represents that Vendor has the qualifications and ability to provide the Software and Services in a professional manner, without the advice, control or supervision of District. Vendor's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.
 - 8.2. **Meetings.** Vendor and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Vendor's performance under this Agreement.
 - 8.3. **District Approval.** The work completed herein must meet the approval of District and shall be subject to District's general right of inspection and supervision to secure the satisfactory completion thereof.
 - 8.4. **New Project Approval.** Vendor and District recognize that Vendor's Software and Services may include working on various projects for District. Vendor shall obtain the approval of District prior to the commencement of a new project.
9. **Originality of Software and Services.** Except as to standard generic details, Vendor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to District and/or used in connection with this Agreement, shall be wholly original to Vendor and shall not be copied in whole or in part from any other source, except that submitted to Vendor by District as a basis for such services.
10. **Customer License Grant.** Vendor grants to District a non-exclusive, non-transferable, world-wide, royalty-free license to: access and use the Software and Services; and use any of Vendor's intellectual property included or embodied therein.
11. **Audit.** Vendor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Vendor transacted under this Agreement. Vendor shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Vendor shall permit 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 Software and Services covered by this Agreement. Audit(s) may be performed at any time, provided that District shall give reasonable prior notice to Vendor and shall conduct audit(s) during Vendor's normal business hours, unless Vendor otherwise consents.
12. **Disputes.** In the event of a dispute between the parties as to provision of the Software and Services, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute in good faith. Pending resolution of the dispute, Vendor agrees it will neither rescind the Agreement nor stop the provision of the Software and Services, but will allow determination by the court of the State of California, in the county in which District's administration office is located, having competent jurisdiction of the dispute. Disputes may be determined by mediation if mutually agreeable, otherwise by litigation. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution

requirements, Vendor shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to Vendor's right to bring a civil action against District. For purposes of those provisions, the running of the time within which a claim must be presented to District shall be tolled from the time Vendor submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

13. Termination.

13.1. **For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Vendor only for Software and Services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance under this Agreement by Vendor. Notice shall be deemed given when received by Vendor or no later than three (3) calendar days after the day of mailing, whichever is sooner.

13.2. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

13.2.1. material violation of this Agreement by Vendor; or

13.2.2. any act by Vendor exposing District to liability to others for personal injury or property damage.

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, District may secure the required services from another Vendor. If the expense, fees, and/or costs to District exceed the cost of providing the service pursuant to this Agreement, Vendor shall immediately pay the excess expense, fees, and/or costs to District upon the receipt of 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.

14. **Indemnification.** To the furthest extent permitted by California law, Vendor shall indemnify and hold harmless District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Vendor, and from any and all claims arising out of or relating to intellectual property rights, including but not limited to allegations of trademark, copyright, or patent infringement ("Claims"). Vendor shall, to the furthest extent permitted by California law, defend the Indemnified Parties at Vendor's own expense, from any and all Claims and allegations relating thereto with counsel approved by District where such approval is not to be unreasonably withheld.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

15. Insurance.

15.1. Vendor shall procure and maintain at all times it performs any portion of the Software and Services the following insurance with minimum limits equal to the amount indicated below.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
Professional Liability	\$ 2,000,000
Workers' Compensation	Statutory Limits
Employers' Liability	\$ 1,000,000

15.1.1. Commercial General Liability and Automobile Liability Insurance.

Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect Vendor, District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Software and Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by District.)

15.1.2. Workers' Compensation and Employers' Liability Insurance.

Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Software and Services. In accordance with provisions of section 3700 of the California Labor Code, Vendor 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 Software and 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 Software and Services.

15.1.3. Professional Liability (Errors and Omissions).

Professional Liability Insurance as appropriate to Vendor's profession, coverage to continue through completion of construction plus two (2) years thereafter.

15.2. Proof of Insurance. Vendor shall not commence performing any portion of the Software and Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to District and approved by District. Certificates and insurance policies shall include the following:

15.2.1. 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 District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

- 15.2.2. 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.
- 15.2.3. An endorsement stating that District and its Governing Board, agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Vendor's insurance policies shall be primary to any insurance or self-insurance maintained by District. An endorsement shall also state that there shall be a waiver of any subrogation.
- 15.2.4. All policies except the Professional Liability, Workers' Compensation, and Employers' Liability Insurance Policies shall be written on an occurrence form.
- 15.3. **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 District.
16. **Compliance with Laws.** Vendor shall observe and comply with all rules and regulations of the governing board of District and all federal, state, and local laws, ordinances and regulations. Vendor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Software and Services as indicated or specified. If Vendor observes that any of the Software and Services required by this Agreement are at variance with any such laws, ordinance, rules or regulations, Vendor shall notify District, in writing, and, at the sole option of District, any necessary changes to the scope of the Software and Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Vendor's receipt of a written termination notice from District.
17. **Certificates/Permits/Licenses/Registration.** Vendor and all Vendor's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Software and Services pursuant to this Agreement.
18. **Employment with Public Agency.** Vendor, if an employee of another public agency, agrees that Vendor 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.
19. **Anti-Discrimination.** Vendor herein agrees to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246; and all administrative rules and regulations found to be applicable to Vendor and all of its subconsultants. In addition, Vendor agrees to require like compliance by all of its subconsultant(s).
20. **Fingerprinting.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Vendor's performing of any portion of the Software and Services. Although District has determined that fingerprinting is not applicable to this Agreement, Vendor expressly acknowledges that the following conditions shall apply to any work performed by Vendor and/or Vendor's employees on a school site:

- 20.1. All site visits shall be arranged through the District;
 - 20.2. Vendor and Vendor's employees shall inform District of their proposed activities and location at the school site, allowing District time to arrange site visits without a disruption to the educational process;
 - 20.3. Vendor and/or Vendor's employees shall check in with the school office each day immediately upon arriving at the school site;
 - 20.4. Once at such location, Vendor and Vendor's employees shall not change locations without contacting the District;
 - 20.5. Vendor and Vendor's employees shall not use student restroom facilities; and
 - 20.6. If Vendor and Vendor's employees find themselves alone with a student, Vendor and Vendor's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.
21. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
22. **District's Evaluation of Vendor, Vendor's Employees, and/or Subconsultants.** District may evaluate Vendor in any way District is entitled pursuant to applicable law. District's evaluation may include, without limitation:
- 22.1. Requesting that District employee(s) evaluate Vendor and Vendor's employees and subconsultants and each of their performance.
 - 22.2. Announced and unannounced observance of Vendor, Vendor's employee(s), and/or subconsultant(s).
23. **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 this Agreement or performance under this Agreement.
24. **Confidentiality.** Vendor and all Vendor's agents, personnel, employee(s), and/or subconsultant(s) shall maintain the confidentiality of all information received in the course of performing the Software and Services. Vendor understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
25. **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 or electronic mail, addressed as follows:

District:

La Mesa-Spring Valley School District
470 Date Avenue
La Mesa, CA 91942
Email: jennifer.nerat@lmsvschools.org
ATTN: Jennifer Nerat, Assistant
Superintendent, Business Services

Vendor:

[NAME]

_____, _____
Fax: _____
Email: _____
ATTN: _____

Any notice personally given or sent by facsimile transmission or electronic mail 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) calendar days after deposit in the United States mail.

- 26. **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.
- 27. **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 county in which District's administrative offices are located.
- 28. **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.
- 29. **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.
- 30. **Assignment.** The obligations of Vendor pursuant to this Agreement shall not be assigned by Vendor.
- 31. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
- 32. **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.
- 33. **Attorney's 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.
- 34. **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 Agreement shall be construed as if jointly prepared by the Parties.

35. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
36. **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.
37. **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.
38. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

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

Dated: _____, 20____ Dated: _____, 20____

La Mesa-Spring Valley School District

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Information regarding Vendor:

License No.: _____

Employer Identification and/or
Social Security Number

Registration No.: _____

Address: _____

NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, District requires Vendor to furnish the information requested in this section.

Telephone: _____

Facsimile: _____

E-Mail: _____

Type of Business Entity:

- ____ Individual
- ____ Sole Proprietorship
- ____ Partnership
- ____ Limited Partnership
- ____ Corporation, State: _____
- ____ Limited Liability Company
- ____ Other: _____

EXHIBIT A
DESCRIPTION OF SOFTWARE AND SERVICES TO BE PERFORMED BY VENDOR

Vendor's entire Proposal is **not** made part of this Agreement.

[TO BE INSERTED]

EXHIBIT B
HOURLY BILLING RATES AND/OR UNIT PRICES

Vendor's entire Proposal is **not** made part of this Agreement.

[TO BE INSERTED]

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.

- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing satisfactory proof to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance this Agreement.

Date: _____

Name of Vendor: _____

Signature: _____

Print Name and Title: _____

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with District prior to performing under this Agreement.)

END OF DOCUMENT

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Agreement for Software and Related Services ("Agreement"):

- Vendor's employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Vendor's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Vendor for its performance under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 (c))

Date: _____

District Representative's Name and Title: _____

District Representative's Signature: _____

- The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Vendor's performance under this Agreement and Vendor certifies its compliance with these provisions as follows: *"Vendor certifies that the Vendor has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Vendor's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Vendor, who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto."*

- Vendor's performance under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:

- The installation of a physical barrier at the worksite to limit contact with pupils.
- Continual supervision and monitoring of all Vendor's on-site employees of Vendor by an employee of Vendor, _____, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.
- Surveillance of Employees by District personnel.

Date: _____

District Representative's Name and Title: _____

District Representative's Signature: _____

I am a representative of the Vendor entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Vendor.

Date: _____

Name of Vendor: _____

Signature: _____

Print Name and Title: _____