

## **AGREEMENT FOR PRELIMINARY SERVICES**

This Agreement for Preliminary Services (“**Agreement**”) dated May 14, 2025 (“**Effective Date**”), is made and entered into by and between the **Mt. Diablo Unified School District** (“**District**”) and **KYA Services LLC (The KYA Group)** (“**Contractor**”) (together, the “**Parties**”).

### **RECITALS**

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

**WHEREAS**, the District has received a grant from the Bay Area Air Quality Management District which includes funding for the installation of electric vehicle charging-related infrastructure (“**Project**”);

**WHEREAS**, in conjunction with the Project, the District seeks to have the Contractor perform preliminary services as more fully described in **Attachment A** attached hereto (“**Preliminary Services**”) and the Contractor represents that it is able and qualified to perform Preliminary Services.

### **AGREEMENT**

**NOW, THEREFORE**, for good and sufficient consideration, receipt of which is acknowledged, the Parties agree as follows:

**1. Services.**

- 1.1. The Contractor shall provide the services as described in **Attachment A**, attached hereto and incorporated herein by this reference (“**Services**” or “**Work**”). The scope of services will generally consist of the following:

**Design and Engineering of electrical bus charging stations (total of eight (8) Stations) and a large solar canopy covering electric bus parking stalls.**

- 1.2. Notwithstanding any provision contained in this Agreement, Contractor shall not perform any Preliminary Services for which a Contractor is required to be licensed pursuant to Article 5 (commencing with § 7065) of Chapter 9, Division 3 of the Business and Professions Code.
- 2. Term.** Unless terminated or otherwise cancelled as permitted herein, the term of this Agreement shall be for the duration of the Services provided under this Agreement consistent with the Schedule. Agreement shall become effective only upon proper execution by the Parties; certification as to the availability of funds; and approval or ratification by the District’s Board of Education in an open, noticed meeting. The District has no obligation to renew or extend this Agreement after expiration of its Term.
- 2.1. **Notice to Proceed.** Within a reasonable time after the Parties execute this Agreement, the District shall issue a Notice to Proceed to Contractor at which time Contractor shall commence the performance of the Services.
- 2.2. **Schedule.** The schedule for the Preliminary Services is as follows (“**Schedule**”):

2.2.1. Contractor shall commence the Preliminary Services on or before the date indicated in the Notice to Proceed, but in no event later than **June 1, 2025** and

2.2.2. Contractor shall complete the Preliminary Services on or before October 31, 2026.

3. **Submittal of Documents.** The Contractor shall not commence the Work under this Agreement until the Contractor has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

☒ Signed Agreement  
☒ Certifications to be Completed by Contractor as Part of Agreement for Preliminary Services  
☒ Insurance Certificates and Endorsements  
☒ W-9 Form  
☐ Bonds (as required or requested by District)

4. **Compensation.** The District shall pay Contractor for Contractor's performance of Preliminary Services a total fee **not to exceed \$398,196.00** based on the amount of Work satisfactorily performed and approved by the District pursuant to the scope and provisions in **Attachment A** attached hereto and as indicated herein ("**Fee**") (Choose One):

<input type="checkbox"/> Option 1: By Scope		<input checked="" type="checkbox"/> Option 2: Monthly Fee		<input type="checkbox"/> Option 3: Hourly Rate	
Item	Amount	January	\$ _____	Job Title	Hourly Rate
General Services	\$ _____	February	\$ _____	Principal in Charge	\$ _____
Existing Site Condition Analysis	\$ _____	March	\$ _____	Director	\$ _____
	\$ _____	April	\$ _____	Consultant(s)	\$ _____
	\$ _____	May	\$ _____	Administrative Personnel	\$ _____
	\$ _____	June	\$ _____	Other	\$ _____
<b>Total</b>	\$ _____	July	\$ _____	Other	\$ _____
		August	\$ _____		
		September	\$ _____		

- 4.1. The Fee includes all costs and expenses for all time and materials required and expended to provide the specific Preliminary Services including but not limited to the costs of hiring sub-consultants, contractors and other professionals, all travel-related expenses, as well as for meetings with District and its representatives, long distance telephone charges, copying expenses, salaries of Contractor staff and employees working on the Project, overhead, and any other reasonable expenses incurred by Contractor in performance of the Preliminary Services.

- 4.2. The Contractor shall submit a monthly itemized statement of Service charges and expenses to the District on the fifth (5<sup>th</sup>) day of each month. The itemized statement shall reflect the hours spent, or scopes of work performed, by the Contractor in performing its Services, and, if applicable, the statements shall reflect expenses and materials. The itemized statement shall show the days and hours worked each workday Contractor performs Services for the previous month. District will permit a one (1) month grace period beyond this time for the Contractor to submit its invoice for a particular month's work. No amounts shall be due or owing to the Contractor if it fails to submit an invoice to the District at or before the end of that grace period.
- 4.3. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within forty five (45) Days after the Contractor submits an itemized statement to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.
5. **Expenses.** District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing the Services, except as expressly provided for in this Agreement.
6. **Independent Contractor.** Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor's employees. In the performance of the work herein contemplated, Contractor is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of Contractor's Work, District being interested only in the results obtained.
7. **Contractor and Subcontractor Registration and Compliance.**
- 7.1. Contractor acknowledges that, for purposes of Labor Code § 1725.5, all or some of the Work is a public work to which Labor Code § 1771 applies and that the Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall comply with Labor Code § 1725.5, including without limitation the registration requirements for itself and its subcontractors. Contractor represents that all of its subcontractors are registered pursuant to Labor Code § 1725.5.
- 7.2. Labor Code § 1771.1(a) states the following:
- "A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work Contractor to Section 1725.5 at the time the contract is awarded."

- 7.3. Contractor shall comply with the registration and compliance monitoring provisions of Labor Code § 1771.4, including furnishing its CPRs to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations.
- 7.4. Contractor shall post job site notices, as required by law, including without limitation Labor Code § 1771.4.
- 7.5. Contractor shall comply with all requirements of Labor Code § 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.
8. **Designated Representatives.** Contractor shall coordinate with District personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work related to the Project.
9. **Materials.** Contractor shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as expressly provided for in this Agreement.
10. **Performance of Services.**
  - 10.1. **Standard of Care.**
    - 10.1.1. Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Contractor's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts. Contractor's Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.
    - 10.1.2. Contractor hereby represents, to the extent applicable, that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of the Agreement.
    - 10.1.3. Contractor shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Contractor understands that the District relies upon such professional quality, accuracy, completeness, and coordination by Contractor in performing the Services.
    - 10.1.4. Contractor shall ensure that any individual performing work under the Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the work assigned to them.
  - 10.2. **Meetings.** In addition to all public hearings and meetings, Contractor agrees to participate in coordination meetings to discuss District strategies, timetables, implementations of Services,



and any other issues deemed relevant to the Project.

### **10.3. District Approval.**

10.3.1. The District has the right to inspect and supervise to secure satisfactory completion of the Services.

10.3.2. Prior to any documents being made public, Contractor shall provide in draft form to District staff and District legal counsel, all documents that it or its subcontractors prepare.

## **11. Information.**

11.1. **Furnished by District.** Upon request by Contractor, District shall furnish Contractor any information and documents readily available to District that the Contractor determines may be of use to the Contractor in the performance of the Services. District shall rely upon Contractor to determine which information and documents may be of use to the Contractor in performance of the Services. District makes no representations with respect to the reliability, accuracy, or completeness of any information or documents furnished by the District. Contractor shall determine if it is appropriate to rely on the District furnished information or documents. Contractor shall determine if clarification, additional information, or additional data is needed, and if so, to seek it out.

11.2. **Furnished by Others.** Contractor is to obtain, utilizing its own personnel, any required information that has been developed by other public or private entities that are not under contract to District. Contractor shall determine if it is appropriate to rely on the information or data developed by these other public or private entities. Contractor shall determine if clarification, additional information, or additional data is needed.

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

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

14. **Audit.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement.

Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents. For a period of three (3) years after final payment under this Agreement, all expenditures of public funds in excess of ten thousand dollars (\$10,000) shall be subject to examination and audit by the State Auditor. The audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering the Agreement.

## **15. Termination.**

15.1. **Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Contractor only for the Services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of Services by Contractor. Notice shall be deemed given when received by the Contractor or no later than three (3) Days after the day the notice was mailed, whichever is sooner.

15.2. **Without Cause by Contractor.** Contractor cannot terminate this Agreement without cause.

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

15.3.1. material violation of this Agreement by the Contractor; or

15.3.2. any act by Contractor exposing the District to liability to others for personal injury or property damage; or

15.3.3. Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) 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) Days cease and terminate. In the event of this termination, the District may secure the Services from another Contractor. If the expense, fees, and/or costs to the District exceeds the cost of providing the Services pursuant to this Agreement, the Contractor shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expenses, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

15.4. **With Cause by Contractor.** Contractor may only terminate this Agreement after giving written notice of intention to terminate for cause and the expiration of the time to cure. Cause shall only include:

15.4.1. Material violation of this Agreement by the District, or

15.4.2. Failure of the District to timely pay undisputed Contractor invoices.

Written notice by Contractor shall contain the reasons for such intention to terminate and unless within thirty (30) 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 thirty (30) Days cease and terminate. During the thirty (30) Days the Inspector shall continue providing Services to the District until the Agreement ceases and terminates. In the event of this termination, the District may secure the Services from another Contractor.

15.5. **Ownership of Records.** It is mutually agreed that all materials prepared by Contractor under this Agreement shall become the property of the District and Contractor shall have no property right therein whatsoever. Contractor hereby assigns to District any copyrights associated with the materials prepared pursuant to the Agreement. Immediately upon termination and upon written request, the District shall be entitled to, and Contractor shall deliver to the Contractor, all data, drawings, specifications, reports, estimates, summaries and such other materials and commissions as may have been prepared or accumulated to date by the District in performing the Agreement which is not Contractor privileged information, as defined by law, or Contractor's personnel information.

16. **Indemnification.** The Contractor shall indemnify, defend with legal counsel reasonably acceptable to the District, keep and hold harmless the District, and their respective board members, officers, representatives, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, damages, losses, and expenses, caused by, arising out of, resulting from, or incidental to, the performance of the Work under this Contract by the Contractor or its subcontractors to the full extent allowed by the laws of the State of California, and not to any extent that would render these provisions void or unenforceable, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property, except to the extent caused by the negligence or willful misconduct of the Indemnitees. This agreement and obligation of the Contractor shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein.

17. **Insurance.**

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

17.1.1. **Commercial General Liability and Automobile Liability Insurance.**

Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Contractor, the 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 Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

17.1.2. **Workers' Compensation and Employers' Liability Insurance.**

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

17.1.3. **Sexual Molestation and Abuse Liability Insurance.** Contractor shall procure and maintain, during the life of this Contract, sexual molestation and abuse insurance. Contractor shall require its Subcontractor(s), if any, to procure and maintain sexual molestation and abuse insurance for any and all employee(s) of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Contractor's insurance. If any class of employee or employees engaged in Work under the Contract, on or at the Site of the Project, are not covered under the sexual molestation and abuse insurance, Contractor shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage to cover any employee(s) not otherwise covered before any of those employee(s) commence work.

17.1.4. **Professional Liability (Errors and Omissions).** This insurance shall cover the Contractor and his/her subcontractors(s) for two million dollars (\$2,000,000) aggregate limit subject to no more than twenty-five thousand dollars (\$25,000) per claim deductible, coverage to continue through completion of construction plus two years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.

<b>Commercial General Liability</b> (Includes: Bodily Injury, Property Damage, Personal & Advertising Injury, Product Liability and Completed Operations)	Combined Single Limit	\$2,000,000
	General Aggregate Product Liability and Completed Operations	\$4,000,000 \$2,000,000
<b>Automobile Liability – Any Auto</b>	Combined Single Limit <b>NO</b> General Aggregate	\$2,000,000
<b>Excess Liability (Umbrella)</b>		\$6,000,000 per occurrence; \$6,000,000 aggregate
<b>Workers Compensation</b>		Statutory limits pursuant to State law
<b>Employers' Liability</b>		\$2,000,000 each incident
<b>Sexual Abuse / Molestation</b>		\$1,000,000 each incident; \$3,000,000 policy limit
<b>Property of Others</b>	Combined Single Limit General Aggregate	Issued for the value and scope of Work stored off-site.
<b>Professional Liability</b>		\$2,000,000 per occurrence and annual aggregate

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

- 17.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) Days after date of mailing notice."
- 17.2.2. 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.
- 17.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers ("Additional Insureds") are named Additional Insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. An endorsement shall also state that Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by District.
- 17.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.
- 17.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.
18. **Assignment.** The obligations and liabilities of the Contractor pursuant to this Agreement shall not be assigned voluntarily by the Contractor nor assigned by operation of law, without express written consent of the District.
19. **Binding Contract.** This Agreement shall be binding upon the Parties hereto and upon their successors and assigns and shall inure to the benefit of the Parties and their successors and assigns.
20. **Compliance with Laws.** Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.
21. **Certificates/Permits/Licenses.** Contractor and all Contractor's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of the Services. Except for any license or permits furnished by District, Contractor shall be fully responsible for identifying and obtaining all necessary licenses and permits for the timely prosecution of the Services.
22. **Availability Of Funds; Budget And Fiscal Provisions; Termination In The Event Of Non-Appropriation.** This Agreement is subject to the budget and fiscal policies, regulations and

practices of the District, and approval and appropriation of funds for this Agreement. The amount of the District's obligation hereunder shall not at any time exceed the amount herein stated or stated in any approved amendment. If funds are appropriated for only a portion of a fiscal year, this Agreement will terminate, without penalty, at the end of the period for which funds are appropriated. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

**23. Disallowance.**

- 23.1. If Contractor claims or receives payment from the District for a service that is later disallowed by the United States Government, State of California or any other grantors, Contractor shall promptly refund the disallowed amount to the District upon the District's request. At its option, the District may offset the amount disallowed from any payment due or that may become due to Contractor under this Agreement.
- 23.2. Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal, state or local governmental programs. Contractor acknowledges that this certification of eligibility to receive federal or state funds is a material term of this Agreement.

**24. Submitting False Claims; Monetary Penalties.** Contractor agrees to comply with and is subject to the California False Claims Act (Government Code §§ 12650 *et seq.*), including treble damages and penalties as set forth in the operative statutory provision at the time of any violation.

**25. Payment Does Not Imply Acceptance Of Work.** No payment shall in any way lessen the liability of Contractor to remedy or replace unsatisfactory work, service, equipment, or materials, if the unsatisfactory character of such work, service, equipment or materials was not detected at the time of payment. Service, materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by the District and in such case must be remedied or replaced by Contractor without delay at no additional cost to the District.

**26. Compliance With Laws And Board Policies.** Contractor shall keep itself fully informed of applicable federal, state and local laws, regulations, orders, and District Board Policies and Administrative Regulation affecting the performance of, or necessary to ensure the safe and appropriate performance of this Agreement, and shall at all times comply with such laws, regulations, orders, District Board Policies, and Administrative Regulations as they may be amended from time to time.

**27. California State Teachers Retirement Services - Postretirement Earnings Limit.**

- 27.1. A school district is required to report post-retirement earnings to California State Teachers Retirement Services ("CalSTRS") for retired members who perform creditable service whether the retired member was compensated as an employee of the district, independent contractor or employee of a third party.
- 27.2. When a retired member's earnings exceed the fiscal year limitation, their retirement benefit will be reduced by the amount earned over the annual limit.
- 27.3. The amount reduced may be equal to their monthly retirement benefit payable but shall not exceed the annual retirement benefit payable to the member.
- 27.4. Contractor certifies that it is cognizant and fully informed of regulations regarding postretirement earnings limits applicable to retirees from CalSTRS. (California Education Code §§ 22714, 24114, 24116, 24214, 24214.5 and 24215.)
- 27.5. **Contractor shall inform the District if owner and/or their employees is a retired member of CalSTRS before receiving payment for services under this Agreement, and all post-retirement earnings shall be reported to CalSTRS.**



- 27.6. Contractor shall indemnify, defend (by counsel reasonably acceptable to the District) and hold harmless the District and its Board, officers, directors, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from any failure to adhere to CalSTRS regulations applicable to retirees Postretirement Earnings Limit.
28. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and District policy. Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the Labor Code, beginning with § 1720, and including §§ 1735, 1777.5 and 1777.6, forbidding discrimination, and §§ 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).
29. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Contractor's performing of any portion of the Services.
30. **Disabled Veteran Business Enterprises.** Education Code § 17076.11 requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Contractor must submit, upon request by District, appropriate documentation to the District identifying the steps the Contractor has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
31. **Interaction with the Media and Public.** Contractor shall promptly refer all inquiries from the news media or public to District and shall not make any statements to the media or the public relating to the Services. If Contractor receives a complaint from a citizen or the community, Contractor shall promptly inform the District about the complaint.
32. **Taxes.** Contractor shall be liable and solely responsible for paying all required taxes and other obligations, including but not limited to federal and state income taxes and social security taxes payable in connection with the Services and this Agreement. Contractor agrees to release, indemnify, defend, and hold District harmless from and against any worker's compensation or any tax liability which District may incur to any Federal or State governments with jurisdiction as a consequence of this Agreement. All payments made to Contractor may be reported to the Internal Revenue Service.
33. **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.
34. **District's Evaluation of Contractor and Contractor's Employees and/or Subcontractors.** The District may evaluate the Contractor in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
- 34.1. Requesting that District employee(s) evaluate the Contractor and the Contractor's employees

and subcontractors and each of their performance.

- 34.2. Announced and unannounced observance of Contractor, Contractor's employee(s), and/or subcontractor(s).
35. **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 for the services performed in connection with this Agreement.
36. **Disputes.** In the event of a dispute between the Parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Contractor shall neither rescind the Agreement nor stop performing the Services.
37. **Confidentiality.** The Contractor and all Contractor's agents, personnel, employee(s), and/or subcontractors(s) shall maintain the confidentiality of all information received in the course of performing the Services. Contractor 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.
38. **Employment with Public Agency.** Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which Services are actually being performed pursuant to this Agreement.
39. **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 sent by overnight delivery service, addressed as follows:

**Mt. Diablo Unified School District**  
1936 Carlotta Drive  
Concord, CA 95519  
ATTN: Adrian Vargas, CBO

**KYA Services, LLC**  
1800 East McFadden Avenue  
Santa Ana, CA 92705  
ATTN: Marvin Fuentes, Sr. Controller

Any notice personally given 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.

40. **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.
41. **California Law.** This Agreement is entered into in California and shall be governed by and the rights, duties and obligations of the Parties, and 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 the District's administrative offices are located. Contractor waives any claim or right to remove an action

on this Agreement to federal court.

42. **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.
43. **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.
44. **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.
45. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
46. **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.
47. **Calculation of Time.** For the purposes of this Agreement, "days" refers to Days unless otherwise specified.
48. **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.
49. **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.
50. **Incorporation of Recitals and Attachments.** The Recitals and each attachment attached hereto are hereby incorporated herein by reference. In the event of any inconsistency between the terms of this Agreement and language set forth in any Attachment to this Agreement, the terms of this Agreement shall take precedence in resolving the conflicting terms.
51. **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 herein.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement, to be effective upon approval or ratification by the District's Board of Education on \_\_\_\_\_.

**KYA Services, LLC**

APPROVED

By:

 5/7/2025

Chief Financial Officer, Brooks Berry  
DATE

**MT DIABLO UNIFIED SCHOOL DISTRICT**

AUTHORIZED AND APPROVED

By:

CBO, ADRIAN VARGAS

DATE

By:

EXECUTIVE DIRECTOR, MELANIE KOSLOW

DATE

APPROVED AS TO FORM

By:

DIRECTOR OF PURCHASING

DATE

CONTRACTS OVER \$500,000

By:

GENERAL COUNSEL

DATE

## **Attachment A to Agreement for Preliminary Services**

### **Scope of Services**

1. **Scope of Contractor's Preliminary Services.** Contractor is authorized to perform the following services by applicable law and agrees to perform the services described herein. ("Preliminary Services"):

The preconstruction services proposal will include the following services:

**Design and Engineering of electrical bus charging stations (total of eight (8) Stations) and a large solar canopy covering electric bus parking stalls.**

#### **Architectural**

- o Design of solar canopy
- o Site Design and placement of solar canopy at Bus Parking.
- o Civil, Electrical, Structural, and City of Concord/AHJ Coordination.
- o Site Assessment (Assume Six (6) Trips to Site)

#### **Site Survey**

- o Site Assessment of Existing conditions and providing background for civil work.

#### **Civil Engineering**

- o Civil Design and Engineering for the placement of shade structure w/ associated details.

#### **Structural Engineering**

- o Structural Design and Engineering of the solar canopy.

#### **Electrical Engineering and PV Design for:**

- o Site Survey of Existing Utilities.
- o PGE coordination for new PGE service for new chargers.
- o PV Design over solar canopy.

#### **Electrical design for:**

- o Six (6) Level 3 – Single-sided Chargers. ABB is basis of design.
- o Two (2) Level 3 Dual chargers. ABB is a basis of design.

#### **Permitting:** (City of Concord/PGE (or related AHJ) Approval)

- o Submit drawings to AHJ and PGE, back-check and approval.

#### **CA:**

- o Construction Administration, response to RFI's.
- o Review Submittals

**CERTIFICATIONS TO BE COMPLETED BY CONTRACTOR**  
**AS PART OF**  
**AGREEMENT FOR PRELIMINARY SERVICES**

**THE UNDERSIGNED MUST CHECK EACH BOX AND EXECUTE THIS FORM AND HEREBY CERTIFIES TO THE GOVERNING BOARD OF THE DISTRICT THAT UNDERSIGNED IS:**

- A representative of the Contractor,
- Familiar with the facts herein certified and acknowledged,
- Authorized and qualified to execute the Contract Documents and these certifications on behalf of Contractor and that by executing the Contract Documents undersigned is certifying the following items.

☒ **Labor Code Sections 1860-1861 (Workers' Compensation).** In accordance with Labor Code section 3700, every contractor will be required to secure the payment of compensation to his or her employees. I acknowledge and certify under penalty of perjury that 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 of the work of this contract.

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☐ **Government Code Sections 8355-8357 (Drug-Free Workplace).** I acknowledge and certify under penalty of perjury that I will provide a drug-free workplace by doing all of the following:

- (1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.
- (2) Establishing a drug-free awareness program to inform employees about all of the following:
  - (A) The dangers of drug abuse in the workplace.
  - (B) The person's or organization's policy of maintaining a drug-free workplace.
  - (C) Any available drug counseling, rehabilitation, and employee assistance programs.
  - (D) The penalties that may be imposed upon employees for drug abuse violations.
- (3) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I also acknowledge that this Contract may be subject to suspension of payments under the contract or grant or termination of the contract or grant, or both, and the contractor or grantee thereunder may be subject to debarment, in accordance with the requirements of the above-referenced statute, if the contracting or granting agency determines that any of the following has occurred:

- (1) The contractor or grantee has made a false certification under Section 8355.
- (2) The contractor or grantee violates the certification by failing to carry out the requirements of subdivisions (a) to (c), inclusive, of Section 8355.



I also acknowledge that the Department of General Services shall establish and maintain a list of individuals and organizations whose contracts or grants have been canceled due to failure to comply with the above-referenced statute. This list shall be updated monthly and published each month. No state agency shall award a contract or grant to a person or organization on the published list until that person or organization has complied with the above-referenced statute.

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☒ **Tobacco-Free Environment.** Pursuant to, without limitation, 20 U.S.C. section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and District Board Policies, all District sites, including the Project site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property.

I acknowledge and certify under penalty of perjury that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and acknowledge and certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents to use tobacco and/or smoke on the Project site. The District also prohibits electronic cigarettes, "vaping" or similar product uses on District sites.

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☒ **Russian Sanctions Certification**

On February 21, 2022, President Biden issued Executive Order 14065 (<https://www.whitehouse.gov/briefing-room/presidential-actions/2022/02/21/executive-order-on-blocking-property-of-certain-persons-and-prohibiting-certain-transactions-with-respect-to-continued-russian-efforts-to-undermine-the-sovereignty-and-territorial-integrity-of-ukraine/>; "**Federal Order**") imposing economic sanctions and prohibiting many activities including, but not limited to, investing in, importing to, exporting from, and contracting with, areas of Ukraine and in Russia. On March 4, 2022, California Governor Newsom issued Executive Order N-6-22 requiring state agencies to take steps to ensure any agency and entity under contract with state agencies comply with the Federal Order (<https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf>; "**State Order**").

The District requires the Contractor, as a vendor with the District, to comply with the economic sanctions imposed in response to Russia's actions in Ukraine, including the orders and sanctions identified on the U.S. Department of the Treasury website (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>).

If your Firm's contract with the District has a cumulative value of \$5 million or more, your certification here constitutes your written response to the District, indicating:

- (1) that your Firm is in compliance with the required economic sanctions of the Federal and State Orders;
  - (2) the steps your Firm has taken in response to Russia's actions in Ukraine, including, but not limited to, desisting from making new investments in, or engaging in financial transactions with, Russian entities, not transferring technology to Russia or Russian entities, and directly providing support to the government and people of Ukraine.
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### ☒ **Lobbyist Certification**

The Architect and its Consultants shall at all times comply with the lobbyist certification requirements as set forth below. Specifically, by checking the one applicable option below, Architect hereby represents and warrants to District the following:

- ☒ Architect and its Consultants are not a "Lobbying Coalition," "Lobbying Firm," "Lobbyist" or "Lobbyist Employer" as those terms are defined in the Political Reform Act of 1974 (Gov. Code §§ 81000) (collectively "Lobbyist") and are not performing Services hereunder that would require registering as a Lobbyist.
  - ☐ Architect and its Consultants Services hereunder shall or may include lobbying. Architect and its Consultants shall comply with all applicable District, local, state and/or federal policies, rules, regulations, statutes and requirements governing Lobbyists. In addition, the Architect shall maintain on file registering and reporting records for Lobbyists. These records shall be regularly maintained and updated by Architect and shall be available to District upon request or audit.
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### ☒ **Conflict of Interest Certification**

The Architect and its Consultants shall at all times comply with the conflict of interest certification requirements as set forth below. Architect hereby represents and warrants to District that Architect and its Consultants have read and understand the District's Conflict of Interest Code and, Architect knows or has reason to believe that Architect has a conflict of interest that requires disclosure and Architect and its Consultants shall comply with the applicable disclosure requirements of the District's Conflict of Interest Code. In addition, the Architect shall maintain on file statements of economic interests in accordance with applicable disclosure requirements. These records shall be regularly maintained and updated by Architect and shall be available to District upon request or audit.

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### ☒ **Criminal Background Investigation / Fingerprinting Certification**

The undersigned does hereby certify to the governing board of the District that undersigned is a representative of the Contractor, is familiar with the facts herein certified, is authorized and qualified to execute this certificate on behalf of Contractor; and that the information in this Criminal Background Investigation / Fingerprinting Certification is true and correct.

1. **Education Code.** Contractor has taken at least one of the following actions (check all that apply):

- ☐ **All Workers Fingerprinted.** The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its Subcontractors' employees who interact with pupils, outside of the immediate supervision and control of the pupil's parent or guardian or a school employee, has a valid criminal record summary as described in Education Code Section 44237 (Contractor shall "require each applicant for employment in a position requiring contact with minor pupils to submit two sets of fingerprints prepared for submittal by the employer to the Department of Justice for the purpose of obtaining criminal record summary information from the Department of Justice and the Federal Bureau of Investigation."). A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may interact with District pupils during the course and scope of the Contract is attached hereto; and/or
- ☒ **Physical Barrier.** Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of work, a physical barrier at the Project Site, that will limit contact

between Contractor's employees and District pupils at all times; and/or

☐ **Continual Supervision by Fingerprinted Employee.** Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees and its Subcontractors' employees is:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

☐ **Unoccupied Site.** The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

2. **Megan's Law (Sex Offenders).** I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

Contractor's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

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**I ACKNOWLEDGE AND CERTIFY UNDER PENALTY OF PERJURY THAT I AM DULY AUTHORIZED TO LEGALLY BIND THE CONTRACTOR TO ALL PROVISIONS AND ITEMS INCLUDED IN THESE CERTIFICATIONS, THAT THE CONTENTS OF THESE CERTIFICATIONS ARE TRUE, AND THAT THESE CERTIFICATIONS ARE MADE UNDER THE LAWS OF THE STATE OF CALIFORNIA.**

Date: 5/7/2025

Proper Name of Contractor: KYA Services LLC

Signature: 

By: Brooks Berry (Print Name)

Title: Chief Financial Officer

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Orange )

On 05/07/2025 before me, Abraham Flores III, Notary Public  
(insert name and title of the officer)

personally appeared Brooks Berry,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)

