



MT. DIABLO UNIFIED SCHOOL DISTRICT
1936 Carlotta Drive, Concord, CA 94519 – Phone (925) 682-8000
AGREEMENT BETWEEN MT. DIABLO UNIFIED SCHOOL DISTRICT
AND INDEPENDENT CONTRACTOR

THIS AGREEMENT is made this 24th day of May, 2024, by and between the Mt. Diablo Unified School District (hereinafter “District”) and BSK ASSOCIATES (hereinafter “Contractor”).

RECITALS

WHEREAS, District is a school district in the County of Contra Costa, State of California, and has its principal place of business at 1936 Carlotta Drive, Concord, CA 94519. District desires to engage the services of Contractor and to have said Contractor render services in accordance with the terms and conditions provided in this Agreement.

WHEREAS, District is authorized to enter into this Agreement pursuant to *Government Code Section 53060* or *Public Contract Code Section 20111*, or both, as set forth below.

NOW, THEREFORE, District hereby engages Contractor to render services under the terms and conditions of this Agreement.

AGREEMENT

1. Performance of Services.

(a) Contractor agrees to perform the services described on **Exhibit A** (hereinafter “Services”), attached hereto and incorporated herein, as an independent contractor. Contractor will determine the means, manner, method, and details of performing the Services. Contractor shall be responsible for providing the materials, tools and transportation necessary for the performance of the Services. Contractor may, at Contractor’s own expense, use non-District employees to perform the Services under this Agreement. Subcontractors may be used only with the written approval of the District.

(b) Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of the District. Contractor shall be solely responsible for the professional performance of the Services, and shall receive no assistance, direction, or control from District. Contractor shall have sole discretion and control of Contractor’s Services and the manner in which they are performed.

2. Compensation. District agrees to compensate Contractor for the performance of the Services on the basis set forth below. Contractor shall be responsible for all expenses incurred in association with the performance of the Services. This Agreement is **NOT TO EXCEED \$** 30,301.50.

The basis of the fee for Services shall be as follows:

District staff to check the applicable box.

\$ _____ per hour \$ _____ per day \$ _____ per engagement

District staff to enter the complete Budget Code(s).

(a)	<u>21</u>	-	<u>9010</u>	-	<u>0000</u>	-	<u>8500</u>	-	<u>715100</u>	-	<u>000</u>	-	<u>152</u>	-	<u>014</u>	-	<u>5890</u>	\$	<u>7,612.50</u>
(b)	<u>21</u>	-	<u>9010</u>	-	<u>0000</u>	-	<u>8500</u>	-	<u>715100</u>	-	<u>000</u>	-	<u>154</u>	-	<u>014</u>	-	<u>5890</u>	\$	<u>7,781.50</u>
(c)	<u>21</u>	-	<u>9010</u>	-	<u>0000</u>	-	<u>8500</u>	-	<u>715100</u>	-	<u>000</u>	-	<u>174</u>	-	<u>014</u>	-	<u>5890</u>	\$	<u>14,907.50</u>

3. Payment Schedule. The Contractor shall submit to the District an invoice as further set forth below. The District shall review the payment request and, as soon as practical, shall: (i) pay the requested amount; or (ii) inform the Contractor that all or some part of the request is disputed.

Contractor shall submit invoices in accordance with the following schedule:

District staff to check applicable box.

- Partial Payments.** Contractor shall invoice District on a monthly basis for work performed in the preceding month pursuant to this Agreement. A District Administrator will verify the invoice to ensure that all required Services have been satisfactorily performed.
- Scheduled Payments.** District shall submit payment to the Contractor per the schedule detailed in “**Exhibit A**” see **page 8 of this Agreement**. A District Administrator will verify the invoice to ensure that all required Services have been satisfactorily performed in accordance with the relevant timeline.
- Payment in Full.** Contractor shall invoice District on completion of the Services. A District Administrator will verify the invoice to ensure that all required Services have been satisfactorily performed.

4. **Term and Termination.**

- (a) **Term.** This Agreement will become effective on _____ and shall expire on _____, or when terminated as set forth below.
- (b) **Termination for Cause.** Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notice to the breaching party. Termination shall be effective immediately on receipt of said notice. Upon termination of this Agreement, District will compensate Contractor only for services satisfactorily rendered to the date of termination.
- (c) **Termination for Convenience.** The District may terminate this Agreement at any time by giving thirty (30) days written notice to the Contractor. Termination shall be effective immediately on receipt of said notice. Upon termination of this Agreement, District will compensate Contractor only for services satisfactorily rendered to the date of termination.

5. **Relationship of the Parties.** Contractor enters into this Agreement as, and shall continue to be, an independent contractor. Under no circumstances shall Contractor be considered an employee of District within the meaning of any federal, state, or local law or regulation including, but not limited to, laws or regulations governing unemployment insurance, old age benefits, workers’ compensation, industrial illness or accident coverage, taxes, or labor and employment in general. Under no circumstances shall Contractor look to District as his/her employer, or as a partner, agent, or principal. Contractor shall not be entitled to any benefits accorded to District’s employees, including, without limitation, workers’ compensation, disability insurance, vacation, or sick pay. Contractor shall be responsible for providing, at Contractor’s expense, and in the Contractor’s name, disability, workers’ compensation or other insurance, as well as licenses and permits usual or necessary for conducting the Services hereunder.

Contractor shall pay, when and as due, any and all local, state and federal income or other taxes incurred as a result of Contractor’s compensation hereunder, including estimated taxes, and shall provide District with proof of said payments upon demand.

The parties agree that: (1) Contractor shall be responsible for the control and direction of its own employees and personnel in the performance of the Services under this Agreement; (2) the Contractor’s personnel shall only perform work that is outside the usual course of the District’s business; and (3) Contractor’s personnel shall be engaged in business independent of the District. Contractor shall defend and indemnify the District against any claim by any worker that it is actually an employee of the District.

- 6. **Fingerprinting and Criminal Records Check of Contractor’s Employees.** Contractor shall comply with the provisions of *California Education Code Section 45125.1* regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of the Contractor and/or its employees. To the extent *Section 45125.1* is applicable, Contractor shall not permit any employee to have any contact with District pupils until such time as Contractor has verified in writing to the Board of Education of the District that such employee has not been convicted of a felony, as defined in *Section 45125.1*. If required by District, Contractor shall provide to District the fingerprinting certification attached hereto as **Exhibit B** prior to commencing work under this Agreement.

- 7. **Rules and Regulations.** All rules, policies, and regulations of the Mt. Diablo Unified School District Board of Education, including any rules and regulations related to COVID-19 or other global pandemics, and all federal, state, and local laws, ordinances and regulations are to be observed strictly by Contractor during the performance of Services pursuant to this Agreement.

- 8. **Indemnification.** Contractor shall hold harmless, defend and indemnify District and its officers, elected and appointed officials, employees, and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation reasonable costs and fees (including reasonable attorney’s fees) of litigation) of every nature arising out of or in connection with Contractor’s performance of the Services hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the District.

- 9. **Insurance.** Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, its agents, representatives, employees or subcontractors. 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.
Coverage Minimums shall be at least as broad as:

District staff to check the appropriate boxes.

- (a) **Commercial General Liability (CGL):**
 - Agreements under \$25,000. Insurance Services Office Form CG 0001 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit (with aggregate limit no less than **\$2,000,000**).

 - Agreements of \$25,000 or more. Insurance Services Office Form CG 0001 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit (with aggregate limit no less than **\$4,000,000**).

- (b) **Automobile Liability.**
 - ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with a limit no less than **\$1,000,000** per accident for bodily injury and property damage.

 - For sole proprietors and small businesses** using personal vehicles, evidence of personal auto insurance may be accepted by the District as an alternative provided that such personal auto insurance provides coverage for business uses of the insured vehicle.

(c) **Workers' Compensation.**

As required by the State of California, with Statutory Limits, and **Employer's Liability Insurance** with limit of no less than **\$1,000,000** per accident for bodily injury or disease. All California employers must provide workers' compensation benefits to their employees under *California Labor Code Section 3700*.

If the Contractor is a sole proprietor with no employees, it may be exempt from this requirement provided the Contractor is self-insured as certified in **Exhibit C**. If the Contractor employs one or more employees, it must provide this type of insurance coverage. The District shall not obtain workers' compensation insurance on behalf of Contractor or Contractor's employees.

(d) **Other Coverages When Applicable.** (District staff to check applicable box(es)).

Professional Liability/Errors & Omissions Liability. \$1,000,000/occurrence, \$2,000,000/aggregate. **Applicable for contractors with professional training providing a specialized advanced service, physicians, accountants, architects, engineers, and brokers**

Sexual Abuse and Molestation Coverage. \$3,000,000/occurrence. **Applicable if the Contractor will be alone with students**

Cyber Insurance. Not less than \$2,000,000 per claim to be maintained for the duration of the Agreement and three years following its termination. **Applicable if the Contractor will be using, storing, or accessing, the District's private, confidential, or protected information**

(e) The District reserves the right to require that Contractor maintain and provide evidence of additional insurance coverages as may be necessary or desirable given the nature of the Services. If the Contractor maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the Contractor.

(f) **Additional Insured Status.** The District, its officers, officials, employees, and volunteers are to be named as additional insured by endorsement to the Commercial General Liability policy ~~and to the Sexual Abuse and Molestation policy~~, if applicable, with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. **Sexual Abuse and Molestation Policy is Not Applicable**

(g) **Primary Coverage.** For any claims related to this Agreement, the Contractor's insurance coverage shall be primary insurance as it respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

(h) **Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to the District.

INSURANCE REQUIREMENTS	
No waiver will be granted to eliminate the insurance requirements outlined in this contract. However, in special circumstances, certain insurance requirements may be modified or waived. The following items in Insurance, Section 9, are hereby waived or modified as follows (note, a waiver for one type of insurance does not constitute waiver for all):	
Limits:	_____
Other:	_____
Initials of the Superintendent, or designee, are <u>required</u> to waive or modify any Insurance requirements in this Agreement:	
Superintendent or Designee	Date

- 10. **Originality; Ownership of Designs and Plans.** 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. Contractor agrees that all designs, plans, reports, specifications, drawings, schematics, prototypes, models, inventions and all other information and items made during the course of this Agreement and arising from the Services shall be owned by and assigned to District as its sole and exclusive property.

- 11. **Disputes.** In the event of a dispute between the parties as to performance of the 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, Contractor agrees it will neither rescind the Agreement nor stop the performance of the Services, but will allow determination by the court of the State of California, in the county in which the 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, the Contractor 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 the Contractor's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Contractor submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

- 12. **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 Agreement 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.

- 13. **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 telegram, overnight delivery service, or facsimile transmission, addressed as follows:
 - i. Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the next business day following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

DISTRICT

Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, CA 94519-1397
Attn: Superintendent

CONTRACTOR

Bus. Name: BSK ASSOCIATES
Attn: Veronica Rager
Address: 399 Lindbergh Avenue, Livermore, CA 94551
Phone: 800-772-6352
Fax: _____
Email: vrager@bskassociates.com

14. **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.
15. **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 Contra Costa County, California.
16. **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.
17. **Equal Employment Opportunity.** It is the policy of the District that, in connection with all work performed under District agreements, there shall be no discrimination against any employee or applicant for employment because of race, color, religious creed, national origin, ancestry, marital status, sex, sexual orientation, age, disability or medical condition and therefore the Contractor agrees to comply with applicable federal and state laws. In addition, the Contractor agrees to require like compliance by all subcontractors employed on the work.
18. **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. The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor.
19. **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.
20. **Incorporation of Recitals and Exhibits.** The recitals and exhibits attached hereto are hereby incorporated herein by reference.
21. **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.
22. **Conflicts of Interest.** Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Services under this Agreement. Contractor is aware of *Government Code Section 1090* and the *Political Reform Act* and will disclose any potential conflicts and/or submit a Form 700 as applicable.
23. **Required Documents.** Prior to the commencement of the Services, Contractor shall provide to District evidence of the required insurance coverages as set forth above, a W-9 Form, and executed copies of the following Exhibits:
 - (a) **Exhibit A** – Description of Services, Timelines, and Partial Payment Schedule
 - (b) **Exhibit B** – Fingerprinting Certification
 - (c) **Exhibit C** – Workers’ Compensation Certification
 - (d) **Exhibit D** – Data Privacy Addendum (if applicable)

The District reserves the right to require the Contractor to provide additional documents that may be necessary or desirable in light of the nature of the Services.

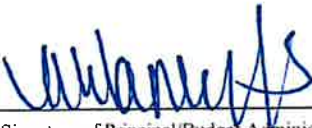
PURCHASE REQUEST # R142130


IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date last written below.

MT. DIABLO UNIFIED SCHOOL DISTRICT

BSK ASSOCIATES

Company/Organization Name or Independent Contractor/Consultant


By:  6/13/24
Signature of Principal/Budget Administrator Date
Title: Melanie Koslow, Executive Director of MO&F
Print Name and Title

By:  June 12, 2024
Signature of Contractor/Consultant Date
Title: Tim Rodriguez, Chief Operating Officer
Print Name and Title

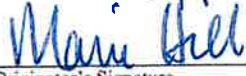
By: _____
Signature of District Administrator (if applicable) Date

Title: _____
Print Name and Title

THIS AGREEMENT IS AUTHORIZED AND APPROVED:

By:  6/14/2024
Signature of Superintendent or Designee Date
Title: ADRIAN VARGAS, CHIEF BUSINESS OFFICER
Print Name and Title

AGREEMENT ORIGINATOR. Prior to commencement of the Services, sign and forward completed original contract packet to Purchasing.

By:  6/13/24 Maintenance, Operations & Facilities
Originator's Signature Date Site/Department Originating this Contract
Marie Hill, Administrative Secretary
Print Name of Originator and Title

Billing Address if reimbursed by outside agency—i.e. ASB, PTA, PFC:

PURCHASE REQUEST # R142130

EXHIBIT A
**DESCRIPTION OF SERVICES, TIMELINES,
AND PARTIAL PAYMENT SCHEDULE (if applicable)**
(Note that all payments are generated from an invoice.)

BSK Associates will provide Special Inspection and Materials Testing Services required for the Elementary Modernization Projects at Meadow Homes ES, Mt. Diablo ES and Rio Vista ES.

See Attached

EXHIBIT B
FINGERPRINTING AND CRIMINAL BACKGROUND CHECK CERTIFICATION
(Contractor REQUIRED to complete.)

One of the boxes below **must** be checked, and an executed copy of this form must be attached to the Independent Contractor Agreement (“Agreement”). Contractor certifies that:

Contractor’s employees or subcontractors will have CONTACT or interaction with District pupils outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee. *“Contractor certifies that the it has complied with the fingerprinting and criminal background investigation requirements of Education Code Section 45125.1 with respect to all Contractor’s employees, subcontractors, agents, and subcontractors’ employees or agents regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor, 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.*

List or attach, all Employee name(s) that have successfully completed the fingerprinting and criminal background check clearance in accordance with law: _____

--OR--

Contractor’s employees or subcontractors will have NO CONTACT or interaction with District pupils outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee. Accordingly, the fingerprinting and criminal background investigation requirements of *Education Code section 45125.1* shall not apply to Contractor’s services under this Agreement.

WHEN CONTRACTOR PERFORMS A CRIMINAL BACKGROUND CHECK, IT SHALL IMMEDIATELY PROVIDE ANY SUBSEQUENT ARREST AND CONVICTION INFORMATION IT RECEIVES TO ANY LOCAL EDUCATIONAL AGENCY THAT IT IS CONTRACTING WITH PURSUANT TO THE SUBSEQUENT ARREST SERVICE.

Megan’s Law (Sex Offenders). Contractor shall verify and 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/>).

MUST BE COMPLETED BY CONTRACTOR’S AUTHORIZED REPRESENTATIVE:

By signing below I certify under penalty of perjury that the information contained on this certification form and attached employee list(s) is accurate. I understand that it is the Contractor’s sole responsibility to maintain, update, and provide the District with current “Fingerprint and Criminal Background Check Certification,” along with the employee list, throughout the duration of Contractor provided services.

CONTRACTOR

By: _____ 

Name: Tim Rodriguez

Title: Chief Operating Officer

Date: June 12, 2024

EXHIBIT C
WORKERS' COMPENSATION CERTIFICATION
(Contractor REQUIRED to complete.)

Labor Code Section 3700 (workers' compensation and insurance) in relevant part provides:

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

- a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his 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.

I certify I will comply with all California workers' compensation insurance requirements before commencing the performance of the Services of this Contract.

--OR--

I certify that I am a sole proprietor, have no employees, and am self-insured.

I understand the District will not obtain workers' compensation insurance on my behalf or on behalf of my employees or subcontractors.

MUST BE COMPLETED BY CONTRACTOR'S AUTHORIZED REPRESENTATIVE:

I am a representative of the Contractor 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 Contractor.

CONTRACTOR

By: 

Name: Tim Rodriguez

Title: Chief Operating Officer

Date: June 12, 2024

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 the District prior to performing any Services under this Contract.

EXHIBIT D

DATA PRIVACY ADDENDUM

(Contractor REQUIRED to Complete; Applicable when AGREEMENT involves access to Pupil/Employee Data.)

This Data Privacy Addendum (“**Data Privacy Addendum**”) to the Agreement Between Mt. Diablo Unified School District and Independent Contractor (“**Independent Contractor Agreement**”) is entered into by and between Contractor and Mt. Diablo Unified School District (“**District**”). To the extent that any term or condition set forth in this Addendum conflicts with the Independent Contractor Agreement, the provisions of this Addendum will control.

WHEREAS, in order to provide the services described in the Agreement, the Contractor may receive or create, and the District may provide documents or data related to students (“**Student Data**”) that are covered by several state and federal privacy laws, including: the *Family Educational Rights and Privacy Act (FERPA)*, the *Children's Online Privacy Protection Act (COPPA)*, *Education Code section 49073.1*, and the *Student Online Personal Information Protection Act (SOPIPA)*. The District and Contractor desire to ensure compliance with applicable state and federal laws, school policies, procedures and regulations.

NOW, THEREFORE, in consideration of the above premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, intending to be legally bound, the parties hereto agree as follows:

1. **Use.** Contractor shall not use any information in a Student Data¹ for any purpose other than those required or specifically permitted by the Independent Contractor Agreement, and shall comply with all applicable state and federal laws pertaining to Student Data privacy and security. Contractor shall require all employees and agents who have access to Student Data to comply with all applicable provisions of this Data Privacy Addendum. Contractor shall not sell or otherwise derive a benefit from sharing information in a Student Data with a third party. Contractor shall enter into written agreements with all subcontractors performing functions pursuant to the Independent Contractor Agreement, whereby the subcontractors agree to protect Student Data in manner consistent with the terms of this Data Privacy Addendum.
2. **Ownership.** All Student Data obtained by Contractor from District continues to be the property of and under the control of the District. The District retains exclusive control over student and staff data, including determining who may access data and how it may be used for legitimate authorized purposes.
3. **Export.** Contractor shall provide a means by which its employees, when so authorized, can search and export Student Data through reasonable procedures such that the District can respond to a parent, legal guardian or eligible student who seeks to review personally identifiable information on the pupil’s records or correct erroneous information.
4. **Disposition.** The Contractor agrees that upon expiration or termination of services under this Agreement, Contractor shall dispose or delete all Student Data obtained under the Independent Contractor Agreement. Disposition shall include (1) the shredding of any hard copies of any Student Data; (2) Erasing; or (3) Otherwise modifying the personal information in those records to make it unreadable or indecipherable by human or digital means. Nothing in the Independent Contractor Agreement authorizes Contractor to maintain Student Data obtained under the Independent Contractor Agreement beyond the time period reasonably needed to complete the disposition.
5. **Security.** Contractor shall maintain adequate administrative, physical, and technical data security measures, consistent with industry standards and technology best practices, to protect Student Data from unauthorized access, disclosure or acquisition by unauthorized persons, and shall not copy, reproduce or transmit data

¹ “Student Data” includes any information directly related to a pupil that is maintained by the District or acquired directly from the pupil. Pupil Records do not include de-identified information (information that cannot be used to identify an individual pupil) used: (1) to improve educational products for adaptive learning purposes and for customized pupil learning; (2) to demonstrate the effectiveness of the operator’s products in the marketing of those products; or (3) for the development and improvement of educational sites, services, or applications.

obtained pursuant to the Agreement except as necessary to fulfill the purpose of the Agreement. Where applicable, the Contractor will require unique account identifiers, usernames and passwords that must be entered each time a client or user signs on.

- 6. Prohibited Use.** Contractor shall not use Student Data, or any data derived from Student Data, to perform or deliver targeted advertising to students, and is prohibited from selling or providing Student Data to third parties for any purpose without District’s written consent.

- 7. Breach Protocol.** Upon becoming aware of any unlawful or unauthorized access to Student Data stored on equipment used by Contractor or in facilities used by Contractor, Contractor will take the following measures:
 - (a) promptly notify the District of the suspected or actual incident within a reasonable amount of time of the incident, not to exceed forty-eight hours, and shall present the information under the following headings: “What Happened,” “What Information was Involved,” “What We are Doing,” “What You Can Do,” and “Persons to Contact for More Information”; and
 - (b) promptly investigate the incident and provide District with detailed information regarding the incident, including the identity of affected users; and
 - (c) assist the District in notifying affected users, affected parents, legal guardians of commercially reasonable steps to mitigate the effects and to minimize any damage resulting from the incident. Upon request from District, Contractor shall notify affected parties or reimburse District for actual costs associated with notifying affected parties.

- 8. Entire Agreement.** This Data Privacy Addendum constitutes the entire agreement between the Parties with respect to the subject matter herein. It supersedes, and the terms of this Data Privacy Addendum govern, any and all previous oral and written communications between the parties, their Affiliates, and their respective employees and representatives regarding these matters.

- 9. Successors Bound.** This Data Privacy Addendum is and shall be binding upon the respective successors in interest to Contractor in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business.

MUST BE COMPLETED BY CONTRACTOR’S AUTHORIZED REPRESENTATIVE:

I am a representative of the Contractor entering into this Agreement with the District and I am familiar with the facts herein certified and am authorized and qualified to execute this Data Privacy Addendum on behalf of Contractor.

CONTRACTOR

By: _____ 

Name: Tim Rodriguez

Title: Chief Operating Officer

Date: June 12, 2024



399 Lindbergh Avenue
Livermore, CA 94551
925.315.3151
www.bskassociates.com

EXHIBIT A

May 21, 2024

BSK Proposal C24000941

Ms. Melanie Koslow
Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, CA 94519

**SUBJECT: Special Inspection and Materials Testing Services
Meadow Homes Elementary School Modernization
1371 Detroit Avenue
Concord, CA 94520**

Dear Ms. Koslow:

BSK Associates is pleased to submit this proposal for Special Inspection and Materials Testing Services required for the **Meadow Homes Elementary School Modernization** in **Concord, CA**. We have developed this proposal package specifically with your needs in mind and based on our experience with Special Inspection requirements of the California Building Code, our review of the provided project plans and specifications (Dated 12/19/2023), correspondence with you regarding the project, and our prior experience with projects of this size and nature.

For your approval, we have included our scope of services and fee estimate, our basis for invoicing, and an authorization and acceptance form for our agreement. Rates not specifically quoted will be charged per our published Schedule of Fees. The hourly rates/charges quoted are for the project duration. It is our understanding that there is no Project Labor Agreement in-place on this project, and that the project is subject to State of California prevailing wage requirements as determined by the Department of Industrial Relations.

In order for BSK to assist you in completing DSA Forms 291, 292 and 293 (as applicable), a final approved copy of DSA Form 103 should be submitted to our office prior to our first site visit. Further, our technicians are required to note they are referring to Approved Plans during their site inspections; a copy should be made available at the project site or fabrication location.

We appreciate the opportunity to submit this proposal. If you should have further questions or comments, please give us a call. We appreciate the opportunity to work with you. We will schedule the work upon your return of our Standard Agreement.

Respectfully submitted,
BSK Associates


Veronica Rager
Project Manager


James K. Auser, PE
CSD Group Manager

Enclosure
Scope of Services and Fee Estimate
Basis for Invoicing
Standard Agreement

SCOPE OF SERVICES AND FEE ESTIMATE
Meadow Homes Elementary School Modernization
 1371 Detroit Avenue, Concord, CA

FIELD SERVICES	DAYS	HRS/DAY	HOURS	RATE	EXTENSION
Concrete Construction					
Rebar Sample and Tag (at fabricator)	2	4	8	\$130.00	\$1,040.00
Concrete Sampling	3	4	12	\$130.00	\$1,560.00
Sample Pickup and Delivery	3	2	6	\$120.00	\$720.00
Trip Charge (Mileage, Bridge Toll, Parking Fees)	5			\$60.00	\$300.00
Post Installed Anchors					
Torque Testing	1	4	4	\$130.00	\$520.00
Equipment Fee	1			\$70.00	\$70.00
Trip Charge (Mileage, Bridge Toll, Parking Fees)	1			\$60.00	\$60.00
FIELD SERVICES ESTIMATE					\$4,270.00

LABORATORY TESTING	FREQUENCY	SETS/UNITS	RATE	EXTENSION
Laboratory Testing				
Concrete Compressive Strength Test (Set of 4)	1 Set / 100 CY	3	\$171.00	\$513.00
Tensile & Bend of Rebar #3-11	1 per material	2	\$186.00	\$372.00
LABORATORY TESTING ESTIMATE				\$885.00

BSK SERVICES ADMINISTRATION	HOURS	RATE	EXTENSION
Principal (Contract / Performance Oversight)	0.5	\$285.00	\$142.50
Registered Engineer (Review, support and reporting)	2	\$250.00	\$500.00
Project Manager (Field Oversight, Daily Report Review)	4	\$235.00	\$940.00
Administration (Data Processing, Report Prep., Field Coordination)	2	\$100.00	\$200.00
Certified Payroll / DIR Upload	Monthly	\$300.00	\$300.00
Reports			
Final Affidavit	1 Per Permit	\$375.00	\$375.00
ADMINISTRATION ESTIMATE			\$2,457.50
TOTAL BUDGET ESTIMATE			\$7,612.50



BASIS FOR INVOICING
Meadow Homes Elementary School Modernization
1371 Detroit Avenue, Concord, CA

BASIS OF CHARGES:

The charge schedule listed below will be our basis for invoicing.

Show-up (No site work performed)	Bill R/T Travel Time + 1 Hour
Work up to 4 Hrs.	Bill 4 Hours
Work from 4 to 8 Hrs.	Bill 8 Hours
Work from 8 to 12 Hrs. and Saturdays	Time and One Half
Work Over 12 Hrs., Sundays and Holidays	Double Time
Travel (Portal-to-Portal)	Hourly
Parking and Toll Charges (if applicable)	Daily Rate

FEES:

Our services will be performed on a time and material basis at unit rates herein listed. Portal-to-portal charge is based from our Livermore office. Rates/charges not specifically quoted will be charged per our published Schedule of Fees. We estimate our fees for this project at **\$7,612.50**. This estimate is based upon our years of experience in this profession, but it is an estimate only. We endeavor to limit our charges to this estimate; however, events beyond our control may affect total cost. For example; if the work progresses quicker than anticipated, fees could be considerably less; or, if the work progresses slower than anticipated, our fees may exceed this estimate.

It is our practice to notify you if it appears our fees will exceed our estimate, but due to the timing and nature of our services and to ensure that your project is not delayed, this may not always be possible. Our invoices however will serve as an update of our progress as well as fees charged versus our estimate. Invoices are payable upon receipt and deemed delinquent if not paid within 30 days. Delinquent invoices may be subject to interest/service charges, and collection expenses including attorney's fees, at our election. As necessary to accommodate the construction schedule, BSK may use contract special inspectors to augment our staff. Inspections performed by contract providers will be billed as specified for BSK employees, herein, and at the rates included in the Fee Estimate.

LIMITATIONS:

BSK Associates provides special inspection services to assist you in verifying that the work is in substantial conformance to the project documents and as required by the California Building Code. These services shall not be construed as acceptance of the work or relieve the contractor in any way from his/her obligations and responsibilities as outlined in the applicable construction documents. BSK assumes no responsibility for the safety of others on the jobsite or the methods and means of construction. BSK will make every effort to respond to the emergent needs of your project, to assure better service we ask that you schedule inspection/testing activities at least 24 hours in advance. To avoid show-up charges, cancel such requests at least four hours in advance of our arrival time. Section 1701 of the CBC requires the special inspection agency to file a final report for the project. The report will be issued upon complete reconciliation of your account. This proposal for construction services shall be valid for not more than sixty (60) days from the date of presentation.



INVOICE AND REPORT DISTRIBUTION

BSK Associates will issue our invoice to the following firm/contact. Please provide a separate accounts payable (AP) contact as appropriate:

Company: Mt. Diablo Unified School
District
Address: 1936 Carlotta Drive
City, State, Zip: Concord, CA 94519
Contact Name: Ms. Melanie Koslow
Contact Phone: 925-596-0446
E-Mail: koslowm@mdusd.org

AP Contact: _____
AP Phone: _____
AP E-Mail: _____

BSK will issue special inspection and materials testing reports by electronic delivery to the following recipients. If additional recipients are desired, please complete and return this form accordingly:

Client:

Company: Mt. Diablo Unified School
District
Address: 1936 Carlotta Drive
City, State, Zip: Concord, CA, 94519
Contact Name: Ms. Melanie Koslow
Contact Phone: 925-596-0446
E-Mail: koslowm@mdusd.org

Other:

Company: _____
Address: _____
City, State, Zip: _____
Contact Name: _____
Contact Phone: _____
Contact E-Mail: _____

Building Department:

Agency Name: _____
Address: _____
City, State, Zip: _____
Contact Name: _____
Contact Phone: _____
Contact E-Mail: _____

Other:

Company: _____
Address: _____
City, State, Zip: _____
Contact Name: _____
Contact Phone: _____
Contact E-Mail: _____

DSA PROJECTS

BSK uploads DSA project deliverables to DSA Box system as required by the Division of the State Architect and California Building Code. In order to provide this service, our firm must be properly listed on the DSA Form 102-IC for each project. Please inform your project team to include the information below for the Laboratory of Record.

Laboratory of Record BSK Associates
LEA #32
License #59941
Name: James Auser, PE & Tim Rodriguez
Email: jauser@bskassociates.com & trodriguez@bskassociates.com
Phone: 925.315.3151



**AGREEMENT FOR CONSTRUCTION MATERIALS TESTING ENGINEERING &
TESTING SERVICES**

THIS AGREEMENT, effective as of this _____ day of _____ 20____, is by and between Mt. Diablo Unified School District ("Client") and BSK Associates ("Company").

THIS PROJECT is generally described as:

***Special Inspection and Materials Testing Services
Meadow Homes Elementary School Modernization***


and is located at:

***1371 Detroit Avenue
Concord, CA ("Project Site")***

THIS AGREEMENT consists of the following documents which are incorporated herein by reference:

- PROPOSAL NO. C24000941, DATED MAY 21, 2024
- GENERAL CONDITIONS FOR CONSTRUCTION MATERIALS ENGINEERING & TESTING SERVICES

Consultant agrees to perform the Services set forth in this Agreement and in accordance with its terms, including all attachments incorporated herein by reference. This agreement may not be modified or altered, except in writing as specifically described in this Agreement.

<u>CLIENT:</u>	<u>COMPANY (BSK):</u>
Signature: <u></u>	_____
Print Name: <u>ADRIAN VARGAS</u>	<u>James K. Auser, PE</u>
Title: <u>CHIEF BUSINESS OFFICER</u>	<u>CSD Group Manager</u>
Company: <u>MT. DIABLO UNIFIED SCHOOL DIST.</u>	<u>BSK Associates</u>
Address: <u>1936 CARLOTTA DRIVE</u>	<u>399 Lindbergh Avenue</u>
<u>CONCORD, CA - 94519.</u>	<u>Livermore, CA 94551</u>
Date: <u>6/14/2024</u>	_____



GENERAL CONDITIONS FOR CONSTRUCTION MATERIALS ENGINEERING AND TESTING SERVICES

1. DEFINITIONS

1.1 Certification. CONSULTANT's expression of a professional opinion based upon the **services** CONSULTANT performed. A certification does not constitute a warranty or guarantee, either express or implied.

1.2 Constructor. The **managing general constructor (MGC)** and other constructor(s), including its/their subcontracting constructors (**subconstructors**) of every tier, retained to perform construction **work** on the project for which CONSULTANT is providing **services** under this AGREEMENT.

1.3 CONSULTANT Entities. The CONSULTANT and its subconsultants, subcontractors, and agents, and all of their respective shareholders, directors, officers, employees, and agents, and their heirs and assigns.

1.4 Day(s). Calendar day(s) unless otherwise stated.

1.5 Hazardous Materials. Contaminants regulated by a public authority, typically because they are known or suspected to jeopardize human health and safety, through exposure of some kind, e.g., contact, inhalation, ingestion, absorption, or radiation. Such materials are listed in various federal, state, and local statutes and regulations. This also includes any toxic substances, chemicals, radioactivity, pollutants, or other materials, in whatever form or state, known or suspected to impair the environment in any way whatsoever.

1.6 Inspect, Inspection. Visual determination of conformance with specific requirements.

1.7 Instruments of Professional Service. All documents and information – e.g., letters, memoranda, reports, boring logs, maps, field data, field notes, drawings and specifications, and **test data** – prepared by CONSULTANT in the course of the Services.

1.8 Managing General Constructor (MGC). The **constructor** that has overall responsibility for project-site activities, including site safety and security, and is in charge of all other **constructors** and **subconstructors** hired for the project.

1.9 Observation, Observe. On the basis of CONSULTANT's professional judgment, the act of visual evaluation or visually evaluating general conformance with requirements.

1.10 Services. The professional **services** provided by CONSULTANT under this AGREEMENT, including **services** described in the scope of **services** included in Exhibit A and any written task order or amendment to this AGREEMENT.

1.11 Subconstructor. A constructor hired by the **managing general constructor** or another **constructor** or **subconstructor**.

1.12 Test(s), Testing. Measurement, examination, and other activities to assess the characteristics or performance of materials.

1.13 Work. A **constructor's**, or **subconstructor's**, labor, materials, equipment, and constructed results.

2. ACCEPTANCE OF TERMS AND CONDITIONS

Unless otherwise specifically stated by CLIENT in writing, CLIENT's request that CONSULTANT initiate **Services** will constitute CLIENT's acceptance of this AGREEMENT and all of its terms and conditions. Any additional or different terms that CLIENT provides in any subsequent acknowledgment, purchase order, task order, or other document that vary from any of the terms herein are hereby objected to and rejected. Any such terms proposed by CLIENT, whether by offer or acceptance, shall be void unless CONSULTANT expressly agrees to them in writing.

3. SCOPE OF SERVICES

3.1 Services Provided; Independent Contractor. CONSULTANT will provide the **Services** set forth in the scope of **services** (Exhibit A) as an independent contractor.

3.2 Authority of CONSULTANT. CONSULTANT will report to CLIENT data and results of **Observation, Inspection, and Testing** as set forth in the scope of **services** (Exhibit A). CONSULTANT will report to CLIENT or CLIENT's representative **Observed** or **Inspected** work that, in CONSULTANT's opinion, fails to conform to project plans and specifications. CONSULTANT has no right or responsibility to approve, accept, reject, or stop **Work** of any **Constructor, Subconstructor**, or other agent of CLIENT. No action of CONSULTANT or CONSULTANT's site representative(s) shall be construed by any party as revoking, altering, enlarging, relaxing, or releasing any

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requirement of the plans, specifications, or codes applicable to the project or any agreement between CLIENT and others. Such rights are reserved solely for CLIENT.

3.3 Referenced Standards. CONSULTANT will perform **Observations, Inspections, and Tests**, in general accordance with the applicable standards referenced by CONSULTANT. CONSULTANT makes no representation about compliance with any other standards.

3.4 Variation of Material Characteristics and Conditions. CONSULTANT's **Observations** and standardized sampling, **Inspection**, and **Testing** procedures indicate conditions of materials and construction activities only at the precise location where and precise time when CONSULTANT performed **Services**. CLIENT recognizes that conditions of materials and construction activities at other locations may vary from those measured, **Observed**, or **Inspected**, and that conditions at one location and time cannot be relied on to indicate the conditions at other locations and times, even when the materials involved appear to be identical. Notwithstanding the foregoing, CONSULTANT may make inferences based upon the information derived from these procedures to formulate professional opinions about conditions in other areas. CONSULTANT is responsible only for those data, interpretations, and recommendations about the actual materials and construction activities it **Observes, Inspects, samples, or Tests**. Even if performed on a continuous basis, **Services** do not and should not be interpreted to mean that CONSULTANT is **Observing, Inspecting, or Testing** all materials on the project. CONSULTANT is not responsible for other parties' interpretations or use of the information CONSULTANT developed.

3.5 Scheduling and Frequency of Observations, Inspections, and Testing. CLIENT acknowledges that CLIENT – directly or indirectly through its designee – has the sole right and sole responsibility to determine the extent, frequency, and scheduling of **Observations, Inspections, and Testing** performed by CONSULTANT. Accordingly, CLIENT also acknowledges that CONSULTANT bears no responsibility for damages that may accrue because CONSULTANT did not perform **Observations, Inspections, or Testing** that CLIENT failed to request or schedule.

3.6 Changes in Scope. CLIENT may request changes to the scope of **Services** (Exhibit A). Any such change, including any change in CONSULTANT's compensation or time of performance, will be incorporated into this AGREEMENT only when it takes the form of a written amendment signed by CLIENT and CONSULTANT or, if agreed to orally, only when it is confirmed by CLIENT and CONSULTANT in writing within 10 **Days** of the date of the oral agreement.

3.7 Excluded Services. CONSULTANT's **Services** include only those **Services** specified in the scope of **Services** (Exhibit A). CLIENT expressly waives any claim against CONSULTANT relating to any additional **Services** that CONSULTANT recommended, but that CLIENT either failed to authorize or instructed CONSULTANT to not perform.

3.8 Fiduciary Responsibility. This AGREEMENT does not create a fiduciary responsibility to CLIENT by CONSULTANT or to CONSULTANT by CLIENT.

4. PAYMENTS TO CONSULTANT

CLIENT agrees to pay CONSULTANT for **Services** rendered in accordance with the payment terms provided in this Agreement and/or any written amendments hereto. Invoices will be submitted at the completion of **Services** or on a two-week or four-week basis, at the discretion of Consultant. Payment is due upon receipt of invoice. Amounts unpaid 30 days after the due date shall bear interest at the lesser rate of 18% per annum or the maximum interest rate allowed by law from the date of the invoice. CLIENT shall pay all expenses incurred by CONSULTANT associated with placing a lien or otherwise incurred in collecting any delinquent amount, including, without limitation attorneys' and filing fees. CLIENT shall pay all costs of CONSULTANT in enforcing its rights hereunder, including, without limitation, attorneys' and filing fees and expenses.

5. PERFORMANCE STANDARD

5.1 Professional Standards. CONSULTANT shall, in performing its **Services**, exercise the same degree of skill and care ordinarily exercised under similar circumstances and conditions by practicing professionals undertaking similar services in the same locality at the same time. Subsequent standards will not be applied in judging CONSULTANT's **Services**. CLIENT agrees that the **Services** will be rendered without any warranty or guarantee, whether expressed or implied. CONSULTANT will not be liable for the interpretation by others of data or information CONSULTANT develops. CONSULTANT's **Services** do not constitute **Observing, Inspecting, or verifying** placement of all materials of the project.

5.2 Sampling, Observation, Inspection, and Test Locations. Unless specifically stated otherwise, the scope of **Services** (Exhibit A) intentionally excludes surveying the project site or precisely identifying sampling, **Observation, Inspection, or Test** locations, depths, or elevations. In accordance with customary practice, CONSULTANT will base sampling, **Observation, Inspection, and Test** locations, depths, and elevations on field estimates and information furnished by CLIENT and its representatives. Unless stated otherwise in CONSULTANT's report(s), such locations, depths, and elevations are approximate.

5.3 Sample Disposal. CONSULTANT will dispose of samples immediately after submitting the report covering those samples. If CLIENT prefers CONSULTANT to store samples for a longer period or transfer them to another

party, CLIENT shall submit to CONSULTANT a timely written notice through which CLIENT also agrees to appropriately compensate CONSULTANT for the additional service.

5.4 Buried Utilities and Structures; Property/Work Restoration. If the **Services** require borings, test pits, or other invasive subsurface-exploratory **Services**, CLIENT will provide to CONSULTANT all information it possesses about the location and nature of underground utilities and structures. To reduce the risk of damage or injury to underground utilities and structures, CONSULTANT will rely on CLIENT-furnished information and will also contact an appropriate utility locator. CLIENT agrees to hold CONSULTANT harmless for any damage to underground utilities or structures that are not called to CONSULTANT's attention or that are shown incorrectly on plans or drawings furnished for the purpose of locating such utilities and structures. CONSULTANT will take reasonable precautions to limit the damage to the project site or **Work** caused by the performance of its **Services**. CLIENT understands that some damage may necessarily occur in the normal course of performing **Services**, and that this AGREEMENT excludes repair of such damage unless specifically stated otherwise in the scope of **Services** (Exhibit A) or via a subsequent amendment to this AGREEMENT.

6. CONSTRUCTOR'S PERFORMANCE

CONSULTANT is not responsible for any **Constructors'** means, methods, techniques, or sequences during the performance of any **Constructor's Work**. CONSULTANT will not supervise or direct any **Constructors' Work** nor be liable for any failure of **Constructor** to complete its **Work** in accordance with the project's plans, specifications, and/or applicable codes, laws, and regulations. CLIENT understands and agrees that the **Constructor**, not CONSULTANT, has sole responsibility for the safety and security of persons and property at the project site.

7. CLIENT'S RESPONSIBILITIES

In addition to compensating CONSULTANT for **Services**, CLIENT agrees to:

7.1 Access. Grant or obtain free access to the project site for all equipment and personnel necessary for CONSULTANT to perform its **Services**.

7.2 Representative. Designate a representative to transmit notices and information pertaining to the **Services**, communicate CLIENT's policies and decisions, and assist as necessary in matters pertaining to the project and this AGREEMENT. CLIENT may change its representative by written notice.

7.3 Information. Supply to CONSULTANT all information and documents relevant to the **Services**. CONSULTANT may rely upon such information without independently verifying its accuracy. CLIENT will notify CONSULTANT of any known potential or possible health or safety hazard associated with the materials to be **Tested**, including their intended use, chemical composition, relevant MSDS, manufacturers' specifications and literature, and any previous **Test** results.

7.4 Project Information. Within 7 **Days** of receiving CONSULTANT's written request to do so, CLIENT will provide to CONSULTANT a correct statement of the recorded legal title to the property on which the project is located and the CLIENT's and/or owner's interest therein.

8. CHANGED CONDITIONS

CONSULTANT will give to CLIENT written notice of CONSULTANT's discovery of conditions or circumstances CONSULTANT did not contemplate at the time of this AGREEMENT ("changed conditions"). CLIENT and CONSULTANT will then negotiate an appropriate amendment to this AGREEMENT. If they cannot agree upon an amendment within 30 **Days** after CONSULTANT gives notice, CONSULTANT may terminate this AGREEMENT and be compensated as set forth in Section 13, "Suspension and Delay; Termination."

9. CERTIFICATIONS

CONSULTANT will not execute any **Certification** for the **Services** performed or **Work Observed, Inspected, or Tested**, unless CONSULTANT has reviewed before execution of this AGREEMENT and approved in writing the exact form of such **Certification**. CLIENT will not condition payment or the resolution of any dispute upon CONSULTANT's signing a **Certification**.

10. ALLOCATION OF RISK

10.1 Limitation of Liability. Client and Consultant agree to allocate certain risks so that, to the fullest extent permitted by law, Consultant's total aggregate liability (including its shareholders, directors, officers, employees and agents (collectively "Consultant Entities")) to Client and anyone claiming by, through, or under the Client, is limited to the greater of \$50,000 or Consultant's fees actually paid with respect to this Agreement, for any and all of Client's injuries, damages, claims, losses, expenses, costs, or claim expenses (including reasonable attorneys' and expert witness' fees) arising out of this Agreement from any cause or causes. Such causes may include, but are not limited to, Consultant's negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of express or implied warranty, contractual or common law indemnification, negligent misrepresentation, or other acts giving rise to liability based upon contract, tort, or statute. This provision takes precedence over any conflicting provisions of this Agreement.

10.2 Indemnification of CLIENT. Subject to the terms and limitations of this AGREEMENT, CONSULTANT will indemnify and hold harmless CLIENT, its shareholders, officers, directors, and employees, from and against any and all claims, suits, liabilities, damages, expenses (including without limitation reimbursement of reasonable attorney's fees and defense costs), and other losses (collectively "Losses") to the extent caused by CONSULTANT's proportional negligence in performance of this AGREEMENT. CONSULTANT's defense obligation under this indemnity paragraph is expressly limited to the reimbursement of reasonable defense costs to the extent of CONSULTANT's actual indemnity obligation hereunder.

10.3 Indemnification of CONSULTANT. CLIENT will indemnify and hold harmless **CONSULTANT Entities** from and against any and all Losses except to the extent caused by CLIENT's proportional negligence. In addition, except to the extent caused by CONSULTANT's negligence, CLIENT will defend, indemnify, and hold harmless **CONSULTANT Entities** from and against any and all Losses arising from or related to the existence, disposal, release, discharge, treatment, or transportation of **Hazardous Materials**, or the exposure of any person to **Hazardous Materials**, or the degradation of the environment due to the presence, discharge, disposal, or release of or exposure to **Hazardous Materials**.

10.4 No Personal Liability. CLIENT and CONSULTANT intend that CONSULTANT's **Services** will not subject CONSULTANT's individual employees, officers, or directors to personal liability. Therefore, and notwithstanding any other provision of this AGREEMENT, CLIENT agrees as its sole and exclusive remedy to direct or assert any claim, demand, or suit only against the business entity identified as "CONSULTANT" on the first page of this AGREEMENT.

10.5 Consequential Damages. Neither CLIENT nor CONSULTANT will be liable to the other for any special, consequential, incidental, or penal losses or damages, including, but not being limited to, losses, damages, or claims related to: the unavailability of property or facilities; shut-downs or service interruptions; loss of use, profits, revenue, or inventory; or for use charges, capital costs, or the cost of the claims of the other party and/or its customers.

10.6 Deviation from Recommendations. Unless specifically agreed otherwise in writing, CLIENT agrees that CONSULTANT bears no responsibility for ensuring CLIENT's or any other party's compliance with any specifications, procedures, or recommendations provided by CONSULTANT to CLIENT under this AGREEMENT (collectively, "Recommendations"). CLIENT hereby releases CONSULTANT from all liability arising from any other party's failure to fully comply with Recommendations, and CLIENT will defend, indemnify, and hold harmless CONSULTANT from any party's claims for losses arising from or related to CLIENT's or any other party's failure to fully comply with Recommendations.

10.7 Continuing AGREEMENT. The provisions of this Section 10, "Allocation of Risk," will survive the expiration or termination of this AGREEMENT. If CONSULTANT provides **Services** to CLIENT that the parties do not confirm through execution of a written amendment to this AGREEMENT, provisions of this Section 10 will apply to such services as if the parties had executed a written amendment.

11. INSURANCE

11.1 CONSULTANT's Insurance. If reasonably available, CONSULTANT will maintain Workers' Compensation Insurance, General Liability Insurance, Automobile Liability Insurance, and Professional Liability Insurance. If CLIENT desires additional insured status for itself or other named entities, CONSULTANT will evidence such additional insured status when commercially available.

11.2 CLIENT's Insurance. As appropriate, CLIENT will obtain builder's risk insurance or other property insurance to protect it from injury or damage to the project, and which waives all rights of subrogation against CONSULTANT. Proceeds from such insurance will be held by CLIENT as trustee and will be payable to CONSULTANT as its interests appear.

11.3 Certificates of Insurance. Upon request, CONSULTANT and CLIENT will each provide to the other certificate(s) of insurance evidencing the existence of the policies required herein. Except for professional liability and workers' compensation insurance, all policies required under this AGREEMENT shall contain a waiver of subrogation.

12. OWNERSHIP AND USE OF CLIENT DOCUMENTS AND INSTRUMENTS OF PROFESSIONAL SERVICE

12.1 CLIENT Documents. All documents provided by CLIENT will remain CLIENT's property. CONSULTANT will return all such documents to CLIENT upon CLIENT's request. CLIENT will permit CONSULTANT to make and retain copies of all CLIENT documents.

12.2 Instruments of Professional Service. Except as otherwise agreed to by CLIENT and CONSULTANT, **Instruments of Professional Service** are and shall remain CONSULTANT's property, and CONSULTANT has the right, in its sole discretion, to dispose of or retain the **Instruments of Professional Service**. CLIENT will not provide **Instruments of Professional Service** to any other person or entity without CONSULTANT's prior written consent.

12.2.1 Use by CLIENT. CLIENT has CONSULTANT's permission to reuse CONSULTANT's **Instruments of Professional Service** for purposes reasonably connected with this project, including, without limitation, the project's design and licensing requirements.

12.2.2 Use by CONSULTANT. CONSULTANT may use CONSULTANT's **Instruments of Professional Service** for any purpose. CONSULTANT owns any patentable concepts or copyrightable materials arising from CONSULTANT's **Services**.

12.3 Electronic Media. At CLIENT's request, CONSULTANT will provide **Instruments of Professional Service** to CLIENT in an electronic format, but CLIENT recognizes that CONSULTANT makes no warranties, either express or implied, about the fitness or suitability of any electronically transmitted **Instruments of Professional Service** or media. CLIENT agrees that CONSULTANT's original, hard-copy **Instruments of Professional Service** remain the actual **Instruments of Professional Service**.

12.4 Unauthorized Use. No party other than CLIENT may rely on CONSULTANT's **Instruments of Professional Service** without CONSULTANT's prior written consent and CONSULTANT's receipt of additional compensation. CLIENT waives any and all claims against CONSULTANT resulting from the unauthorized use or alteration of **Instruments of Professional Service** by CLIENT or any party obtaining **Instruments of Professional Service** through CLIENT. CLIENT will defend, indemnify, and hold harmless CONSULTANT from and against any claim, action, or proceeding brought by any party claiming to have relied upon information or opinions contained in **Instruments of Professional Service** without having obtained CONSULTANT's prior written consent to do so, and any claim arising out of or related to the unauthorized use, reuse, or modification of the **Instruments of Professional Service** by CLIENT or any party obtaining them through CLIENT.

12.5 Confidentiality. CONSULTANT will hold confidential business and technical information obtained from CLIENT or CLIENT's representatives or generated in the performance of the **Services** under this AGREEMENT and first identified in writing by CLIENT as "confidential." CONSULTANT will not disclose such information without the consent of CLIENT except to the extent required for: 1) performance of **Services** under this AGREEMENT; 2) compliance with professional or ethical standards of conduct for preservation of public health, safety, and welfare; 3) compliance with any court order or other government directive; and/or 4) protection of CONSULTANT against claims or liabilities arising from performance of **Services** under this AGREEMENT. CONSULTANT's obligation hereunder will not apply to information in the public domain or lawfully acquired from others on a nonconfidential basis.

13. SUSPENSION AND DELAY; TERMINATION

13.1 Suspension and Delay. Upon 10 **Days'** written notice to CONSULTANT, CLIENT may suspend CONSULTANT's **Services**. Upon 10 **Days'** written notice to CLIENT, CONSULTANT may terminate this AGREEMENT if CLIENT suspends the **Services** for more than 60 **Days**, in which case CLIENT will compensate CONSULTANT as provided in Section 13.4. If CLIENT suspends the **Services**, or if CLIENT or others delay CONSULTANT's **Services**, CLIENT and CONSULTANT agree to equitably adjust the time for completion of the **Services** and CONSULTANT's compensation for the additional labor, equipment, and other expenses associated with maintaining CONSULTANT's workforce for CLIENT's benefit during the delay or suspension, and any expenses incurred by CONSULTANT for demobilization and subsequent remobilization.

13.2 Termination for Convenience. CONSULTANT and CLIENT may terminate this AGREEMENT for convenience upon 10 **Days'** written notice delivered or mailed to the other party.

13.3 Termination for Cause. In the event that either party seemingly breaches this AGREEMENT, the nonbreaching party will deliver to the breaching party a written termination notice that states the basis for termination. Neither party may terminate this AGREEMENT for cause if the breaching party cures the breach within 10 **Days** after receiving the termination notice. The nonbreaching party has the right to terminate this AGREEMENT if the breaching party fails to cure the breach within the 10-**Day** period.

13.4 Payment on Termination. Following termination other than for CONSULTANT's breach of this AGREEMENT, CLIENT will pay CONSULTANT for the **Services** performed prior to the termination-notice date, and for any necessary **Services** and expenses incurred in connection with the termination, including, but not limited to, the costs of completing analyses, records, and reports necessary to document project status at the time of termination and costs associated with termination of subconsultant and/or subcontractor contracts in accordance with CONSULTANT's then-current schedule of charges in Exhibit A.

13.5 Force Majeure. In the event that CONSULTANT is prevented from completing performance of its obligations under this AGREEMENT by an occurrence beyond the control of CONSULTANT ("*Force Majeure*"), then CONSULTANT will be excused from any further performance of its obligations and undertakings. In the event of a *Force Majeure* delay that does not result in termination of the AGREEMENT, schedules will be equitably adjusted.

14. DISPUTES

CLIENT and CONSULTANT shall endeavor to negotiate all claims, disputes, and other matters in controversy between CONSULTANT and CLIENT arising out of or in any way related to this AGREEMENT in good faith for a period of 30 days from the date of notice, prior to exercising their rights at law. If the parties fail to resolve the dispute within 30 days, all claims, disputes, and other matters will be submitted to non-binding mediation before and as a condition precedent to other remedies provided by law. If a dispute at law arises related to the **Services** provided under this AGREEMENT and that dispute requires litigation, then: (a) CLIENT assents to personal jurisdiction in the State of

California; and (b) The claim will be brought and tried in judicial jurisdiction of the court of Fresno County and CLIENT waives the right to remove the action to any other county or judicial jurisdiction.

Causes of action arising out of CONSULTANT's **Services** or this AGREEMENT regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of CONSULTANT's substantial completion of **Services** on the **Project**.

15. MISCELLANEOUS

15.1 Assignment and Subcontracts. During the term of this AGREEMENT and following its expiration or termination for any reason, neither party may assign this AGREEMENT or any right or claim under it, in whole or in part, without the prior written consent of the other party, except for an assignment of proceeds for financing purposes. Any assignment that fails to comply with this paragraph will be void and of no effect. CONSULTANT may subcontract for the services of others without obtaining CLIENT's consent if CONSULTANT deems it necessary or desirable for others to perform certain **Services**.

15.2 Integration and Severability. This AGREEMENT reflects the parties' entire agreement with respect to its terms and limitations and supersedes all prior agreements, written and oral. If any portion of this AGREEMENT is found void or voidable, CLIENT and CONSULTANT will consider that portion stricken and will reform the AGREEMENT to achieve as much of the stricken portions' purpose as possible. These terms and conditions survive the completion of the **Services** and the termination of the AGREEMENT, whether termination is for cause or for convenience.

15.3 Modification of This AGREEMENT. This AGREEMENT may be modified or altered only via a written amendment that refers specifically to this AGREEMENT and is signed by an authorized representative of each party.

15.4 Notices. Any and all notices, requests, instructions, or other communications given by either party to the other must be in writing and either hand-delivered to the recipient or delivered by first-class mail (postage prepaid) or express mail (billed to sender) at the addresses given in this AGREEMENT.

15.5 Headings. The headings used in this AGREEMENT are for convenience only. They are not a part of this AGREEMENT.

15.6 Waiver. The waiver of any term, condition, or breach of this AGREEMENT will not operate as a subsequent waiver of the same term, condition, or breach.

15.7 Precedence. These GENERAL CONDITIONS take precedence over any inconsistent or contradictory provisions contained in any other agreement term, proposal, purchase order, requisition, notice to proceed, or other document regarding CONSULTANT's **Services**.

15.8 Incorporation of Provisions Required by Law. This AGREEMENT includes each provision and clause required by law, and the AGREEMENT should be read and enforced as though each such provision and clause were set forth in its entirety.

End of General Conditions



399 Lindbergh Avenue
Livermore, CA 94551
925.315.3151
www.bskassociates.com

EXHIBIT A

May 21, 2024

BSK Proposal C24000942

Ms. Melanie Koslow
Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, CA 94519

**SUBJECT: Special Inspection and Materials Testing Services
Mt. Diablo Elementary School Modernization
5880 Mt. Zion Drive
Clayton, CA 94517**

Dear Ms. Koslow:

BSK Associates is pleased to submit this proposal for Special Inspection and Materials Testing Services required for the **Mt. Diablo Elementary School Modernization in Clayton, CA**. We have developed this proposal package specifically with your needs in mind and based on our experience with Special Inspection requirements of the California Building Code, our review of the provided project plans and specifications (Dated 03/26/2024), correspondence with you regarding the project, and our prior experience with projects of this size and nature.

For your approval, we have included our scope of services and fee estimate, our basis for invoicing, and an authorization and acceptance form for our agreement. Rates not specifically quoted will be charged per our published Schedule of Fees. The hourly rates/charges quoted are for the project duration. It is our understanding that there is no Project Labor Agreement in-place on this project, and that the project is subject to State of California prevailing wage requirements as determined by the Department of Industrial Relations.

In order for BSK to assist you in completing DSA Forms 291, 292 and 293 (as applicable), a final approved copy of DSA Form 103 should be submitted to our office prior to our first site visit. Further, our technicians are required to note they are referring to Approved Plans during their site inspections; a copy should be made available at the project site or fabrication location.

We appreciate the opportunity to submit this proposal. If you should have further questions or comments, please give us a call. We appreciate the opportunity to work with you. We will schedule the work upon your return of our Standard Agreement.

Respectfully submitted,
BSK Associates


Veronica Rager
Project Manager


James K. Auser, PE
CSD Group Manager

Enclosure
Scope of Services and Fee Estimate
Basis for Invoicing
Standard Agreement

SCOPE OF SERVICES AND FEE ESTIMATE
Mt. Diablo Elementary School Modernization
 5880 Mt. Zion Drive, Clayton, CA

FIELD SERVICES	DAYS	HRS/DAY	HOURS	RATE	EXTENSION
Concrete Construction					
Rebar Sample and Tag (at fabricator)	2	4	8	\$130.00	\$1,040.00
Batch Plant Inspection	2	4	8	\$130.00	\$1,040.00
Concrete Sampling	2	4	8	\$130.00	\$1,040.00
Sample Pickup and Delivery	2	2	4	\$120.00	\$480.00
Trip Charge (Mileage, Bridge Toll, Parking Fees)	6			\$70.00	\$420.00
Post Installed Anchors					
Placement Observation	1	4	4	\$130.00	\$520.00
Trip Charge (Mileage, Bridge Toll, Parking Fees)	1			\$70.00	\$70.00
FIELD SERVICES ESTIMATE					\$4,610.00

LABORATORY TESTING	FREQUENCY	SETS/UNITS	RATE	EXTENSION
Laboratory Testing				
Concrete Compressive Strength Test (Set of 4)	1 Set / 100 CY	2	\$171.00	\$342.00
Tensile & Bend of Rebar #3-11	1 per material	2	\$186.00	\$372.00
LABORATORY TESTING ESTIMATE				\$714.00

BSK SERVICES ADMINISTRATION	HOURS	RATE	EXTENSION
Principal (Contract / Performance Oversight)	0.5	\$285.00	\$142.50
Registered Engineer (Review, support and reporting)	2	\$250.00	\$500.00
Project Manager (Field Oversight, Daily Report Review)	4	\$235.00	\$940.00
Administration (Data Processing, Report Prep., Field Coordination)	2	\$100.00	\$200.00
Certified Payroll / DIR Upload	Monthly 1	\$300.00	\$300.00
Reports			
Final Affidavit	1 Per Permit	\$375.00	\$375.00
ADMINISTRATION ESTIMATE			\$2,457.50
TOTAL BUDGET ESTIMATE			\$7,781.50



BASIS FOR INVOICING
Mt. Diablo Elementary School Modernization
5880 Mt. Zion Drive, Clayton, CA

BASIS OF CHARGES:

The charge schedule listed below will be our basis for invoicing.

Show-up (No site work performed)	Bill R/T Travel Time + 1 Hour
Work up to 4 Hrs.	Bill 4 Hours
Work from 4 to 8 Hrs.	Bill 8 Hours
Work from 8 to 12 Hrs. and Saturdays	Time and One Half
Work Over 12 Hrs., Sundays and Holidays	Double Time
Travel (Portal-to-Portal)	Hourly
Parking and Toll Charges (if applicable)	Daily Rate

FEES:

Our services will be performed on a time and material basis at unit rates herein listed. Portal-to-portal charge is based from our Livermore office. Rates/charges not specifically quoted will be charged per our published Schedule of Fees. We estimate our fees for this project at **\$7,781.50**. This estimate is based upon our years of experience in this profession, but it is an estimate only. We endeavor to limit our charges to this estimate; however, events beyond our control may affect total cost. For example; if the work progresses quicker than anticipated, fees could be considerably less; or, if the work progresses slower than anticipated, our fees may exceed this estimate.

It is our practice to notify you if it appears our fees will exceed our estimate, but due to the timing and nature of our services and to ensure that your project is not delayed, this may not always be possible. Our invoices however will serve as an update of our progress as well as fees charged versus our estimate. Invoices are payable upon receipt and deemed delinquent if not paid within 30 days. Delinquent invoices may be subject to interest/service charges, and collection expenses including attorney's fees, at our election. As necessary to accommodate the construction schedule, BSK may use contract special inspectors to augment our staff. Inspections performed by contract providers will be billed as specified for BSK employees, herein, and at the rates included in the Fee Estimate.

LIMITATIONS:

BSK Associates provides special inspection services to assist you in verifying that the work is in substantial conformance to the project documents and as required by the California Building Code. These services shall not be construed as acceptance of the work or relieve the contractor in any way from his/her obligations and responsibilities as outlined in the applicable construction documents. BSK assumes no responsibility for the safety of others on the jobsite or the methods and means of construction. BSK will make every effort to respond to the emergent needs of your project, to assure better service we ask that you schedule inspection/testing activities at least 24 hours in advance. To avoid show-up charges, cancel such requests at least four hours in advance of our arrival time. Section 1701 of the CBC requires the special inspection agency to file a final report for the project. The report will be issued upon complete reconciliation of your account. This proposal for construction services shall be valid for not more than sixty (60) days from the date of presentation.



INVOICE AND REPORT DISTRIBUTION

BSK Associates will issue our invoice to the following firm/contact. Please provide a separate accounts payable (AP) contact as appropriate:

Company: Mt. Diablo Unified School
District
Address: 1936 Carlotta Drive
City, State, Zip: Concord, CA 94519
Contact Name: Ms. Melanie Koslow
Contact Phone: 925-596-0446
E-Mail: koslowm@mdusd.org

AP Contact: _____
AP Phone: _____
AP E-Mail: _____

BSK will issue special inspection and materials testing reports by electronic delivery to the following recipients. If additional recipients are desired, please complete and return this form accordingly:

Client:

Company: Mt. Diablo Unified School
District
Address: 1936 Carlotta Drive
City, State, Zip: Concord, CA, 94519
Contact Name: Ms. Melanie Koslow
Contact Phone: 925-596-0446
E-Mail: koslowm@mdusd.org

Other:

Company: _____
Address: _____
City, State, Zip: _____
Contact Name: _____
Contact Phone: _____
Contact E-Mail: _____

Building Department:

Agency Name: _____
Address: _____
City, State, Zip: _____
Contact Name: _____
Contact Phone: _____
Contact E-Mail: _____

Other:

Company: _____
Address: _____
City, State, Zip: _____
Contact Name: _____
Contact Phone: _____
Contact E-Mail: _____

DSA PROJECTS

BSK uploads DSA project deliverables to DSA Box system as required by the Division of the State Architect and California Building Code. In order to provide this service, our firm must be properly listed on the DSA Form 102-IC for each project. Please inform your project team to include the information below for the Laboratory of Record.

Laboratory of Record BSK Associates
LEA #32
License #59941
Name: James Auser, PE & Tim Rodriguez
Email: jauser@bskassociates.com & trodriguez@bskassociates.com
Phone: 925.315.3151



**AGREEMENT FOR CONSTRUCTION MATERIALS TESTING ENGINEERING &
TESTING SERVICES**


THIS AGREEMENT, effective as of this _____ day of _____ 20____, is by and between Mt. Diablo Unified School District ("Client") and BSK Associates ("Company").

THIS PROJECT is generally described as:
*Special Inspection and Materials Testing Services
Mt. Diablo Elementary School Modernization*
and is located at:
*5880 Mt. Zion Drive
Clayton, CA ("Project Site")*

THIS AGREEMENT consists of the following documents which are incorporated herein by reference:

- PROPOSAL NO. C24000942, DATED MAY 21, 2024
- GENERAL CONDITIONS FOR CONSTRUCTION MATERIALS ENGINEERING & TESTING SERVICES

Consultant agrees to perform the Services set forth in this Agreement and in accordance with its terms, including all attachments incorporated herein by reference. This agreement may not be modified or altered, except in writing as specifically described in this Agreement.

	<u>CLIENT:</u>	<u>COMPANY (BSK):</u>
Signature:		_____
Print Name:	<u>ADRIAN VARGAS</u>	<u>James K. Auser, PE</u>
Title:	<u>CHIEF BUSINESS OFFICER</u>	<u>CSD Group Manager</u>
Company:	<u>MT. DIABLO UNIFIED SCHOOL DIST.</u>	<u>BSK Associates</u>
Address:	<u>1936 CARLOTTA DRIVE</u>	<u>399 Lindbergh Avenue</u>
	<u>CONCORD, CA 94519</u>	<u>Livermore, CA 94551</u>
Date:	<u>06/14/2024</u>	_____



GENERAL CONDITIONS FOR CONSTRUCTION MATERIALS ENGINEERING AND TESTING SERVICES

1. DEFINITIONS

1.1 Certification. CONSULTANT's expression of a professional opinion based upon the **services** CONSULTANT performed. A certification does not constitute a warranty or guarantee, either express or implied.

1.2 Constructor. The **managing general constructor (MGC)** and other constructor(s), including its/their subcontracting constructors (**subconstructors**) of every tier, retained to perform construction **work** on the project for which CONSULTANT is providing **services** under this AGREEMENT.

1.3 CONSULTANT Entities. The CONSULTANT and its subconsultants, subcontractors, and agents, and all of their respective shareholders, directors, officers, employees, and agents, and their heirs and assigns.

1.4 Day(s). Calendar day(s) unless otherwise stated.

1.5 Hazardous Materials. Contaminants regulated by a public authority, typically because they are known or suspected to jeopardize human health and safety, through exposure of some kind, e.g., contact, inhalation, ingestion, absorption, or radiation. Such materials are listed in various federal, state, and local statutes and regulations. This also includes any toxic substances, chemicals, radioactivity, pollutants, or other materials, in whatever form or state, known or suspected to impair the environment in any way whatsoever.

1.6 Inspect, Inspection. Visual determination of conformance with specific requirements.

1.7 Instruments of Professional Service. All documents and information – e.g., letters, memoranda, reports, boring logs, maps, field data, field notes, drawings and specifications, and **test data** – prepared by CONSULTANT in the course of the Services.

1.8 Managing General Constructor (MGC). The **constructor** that has overall responsibility for project-site activities, including site safety and security, and is in charge of all other **constructors** and **subconstructors** hired for the project.

1.9 Observation, Observe. On the basis of CONSULTANT's professional judgment, the act of visual evaluation or visually evaluating general conformance with requirements.

1.10 Services. The professional **services** provided by CONSULTANT under this AGREEMENT, including **services** described in the scope of **services** included in Exhibit A and any written task order or amendment to this AGREEMENT.

1.11 Subconstructor. A constructor hired by the **managing general constructor** or another **constructor** or **subconstructor**.

1.12 Test(s), Testing. Measurement, examination, and other activities to assess the characteristics or performance of materials.

1.13 Work. A **constructor's**, or **subconstructor's**, labor, materials, equipment, and constructed results.

2. ACCEPTANCE OF TERMS AND CONDITIONS

Unless otherwise specifically stated by CLIENT in writing, CLIENT's request that CONSULTANT initiate **Services** will constitute CLIENT's acceptance of this AGREEMENT and all of its terms and conditions. Any additional or different terms that CLIENT provides in any subsequent acknowledgment, purchase order, task order, or other document that vary from any of the terms herein are hereby objected to and rejected. Any such terms proposed by CLIENT, whether by offer or acceptance, shall be void unless CONSULTANT expressly agrees to them in writing.

3. SCOPE OF SERVICES

3.1 Services Provided; Independent Contractor. CONSULTANT will provide the **Services** set forth in the scope of **services** (Exhibit A) as an independent contractor.

3.2 Authority of CONSULTANT. CONSULTANT will report to CLIENT data and results of **Observation, Inspection, and Testing** as set forth in the scope of **services** (Exhibit A). CONSULTANT will report to CLIENT or CLIENT's representative **Observed** or **Inspected** work that, in CONSULTANT's opinion, fails to conform to project plans and specifications. CONSULTANT has no right or responsibility to approve, accept, reject, or stop **Work** of any **Constructor, Subconstructor**, or other agent of CLIENT. No action of CONSULTANT or CONSULTANT's site representative(s) shall be construed by any party as revoking, altering, enlarging, relaxing, or releasing any

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requirement of the plans, specifications, or codes applicable to the project or any agreement between CLIENT and others. Such rights are reserved solely for CLIENT.

3.3 Referenced Standards. CONSULTANT will perform **Observations, Inspections, and Tests**, in general accordance with the applicable standards referenced by CONSULTANT. CONSULTANT makes no representation about compliance with any other standards.

3.4 Variation of Material Characteristics and Conditions. CONSULTANT's **Observations** and standardized sampling, **Inspection**, and **Testing** procedures indicate conditions of materials and construction activities only at the precise location where and precise time when CONSULTANT performed **Services**. CLIENT recognizes that conditions of materials and construction activities at other locations may vary from those measured, **Observed**, or **Inspected**, and that conditions at one location and time cannot be relied on to indicate the conditions at other locations and times, even when the materials involved appear to be identical. Notwithstanding the foregoing, CONSULTANT may make inferences based upon the information derived from these procedures to formulate professional opinions about conditions in other areas. CONSULTANT is responsible only for those data, interpretations, and recommendations about the actual materials and construction activities it **Observes, Inspects**, samples, or **Tests**. Even if performed on a continuous basis, **Services** do not and should not be interpreted to mean that CONSULTANT is **Observing, Inspecting**, or **Testing** all materials on the project. CONSULTANT is not responsible for other parties' interpretations or use of the information CONSULTANT developed.

3.5 Scheduling and Frequency of Observations, Inspections, and Testing. CLIENT acknowledges that CLIENT – directly or indirectly through its designee – has the sole right and sole responsibility to determine the extent, frequency, and scheduling of **Observations, Inspections, and Testing** performed by CONSULTANT. Accordingly, CLIENT also acknowledges that CONSULTANT bears no responsibility for damages that may accrue because CONSULTANT did not perform **Observations, Inspections, or Testing** that CLIENT failed to request or schedule.

3.6 Changes in Scope. CLIENT may request changes to the scope of **Services** (Exhibit A). Any such change, including any change in CONSULTANT's compensation or time of performance, will be incorporated into this AGREEMENT only when it takes the form of a written amendment signed by CLIENT and CONSULTANT or, if agreed to orally, only when it is confirmed by CLIENT and CONSULTANT in writing within 10 **Days** of the date of the oral agreement.

3.7 Excluded Services. CONSULTANT's **Services** include only those **Services** specified in the scope of **Services** (Exhibit A). CLIENT expressly waives any claim against CONSULTANT relating to any additional **Services** that CONSULTANT recommended, but that CLIENT either failed to authorize or instructed CONSULTANT to not perform.

3.8 Fiduciary Responsibility. This AGREEMENT does not create a fiduciary responsibility to CLIENT by CONSULTANT or to CONSULTANT by CLIENT.

4. PAYMENTS TO CONSULTANT

CLIENT agrees to pay CONSULTANT for **Services** rendered in accordance with the payment terms provided in this Agreement and/or any written amendments hereto. Invoices will be submitted at the completion of **Services** or on a two-week or four-week basis, at the discretion of Consultant. Payment is due upon receipt of invoice. Amounts unpaid 30 days after the due date shall bear interest at the lesser rate of 18% per annum or the maximum interest rate allowed by law from the date of the invoice. CLIENT shall pay all expenses incurred by CONSULTANT associated with placing a lien or otherwise incurred in collecting any delinquent amount, including, without limitation attorneys' and filing fees. CLIENT shall pay all costs of CONSULTANT in enforcing its rights hereunder, including, without limitation, attorneys' and filing fees and expenses.

5. PERFORMANCE STANDARD

5.1 Professional Standards. CONSULTANT shall, in performing its **Services**, exercise the same degree of skill and care ordinarily exercised under similar circumstances and conditions by practicing professionals undertaking similar services in the same locality at the same time. Subsequent standards will not be applied in judging CONSULTANT's **Services**. CLIENT agrees that the **Services** will be rendered without any warranty or guarantee, whether expressed or implied. CONSULTANT will not be liable for the interpretation by others of data or information CONSULTANT develops. CONSULTANT's **Services** do not constitute **Observing, Inspecting**, or verifying placement of all materials of the project.

5.2 Sampling, Observation, Inspection, and Test Locations. Unless specifically stated otherwise, the scope of **Services** (Exhibit A) intentionally excludes surveying the project site or precisely identifying sampling, **Observation, Inspection**, or **Test** locations, depths, or elevations. In accordance with customary practice, CONSULTANT will base sampling, **Observation, Inspection**, and **Test** locations, depths, and elevations on field estimates and information furnished by CLIENT and its representatives. Unless stated otherwise in CONSULTANT's report(s), such locations, depths, and elevations are approximate.

5.3 Sample Disposal. CONSULTANT will dispose of samples immediately after submitting the report covering those samples. If CLIENT prefers CONSULTANT to store samples for a longer period or transfer them to another

party, CLIENT shall submit to CONSULTANT a timely written notice through which CLIENT also agrees to appropriately compensate CONSULTANT for the additional service.

5.4 Buried Utilities and Structures; Property/Work Restoration. If the **Services** require borings, test pits, or other invasive subsurface-exploratory **Services**, CLIENT will provide to CONSULTANT all information it possesses about the location and nature of underground utilities and structures. To reduce the risk of damage or injury to underground utilities and structures, CONSULTANT will rely on CLIENT-furnished information and will also contact an appropriate utility locator. CLIENT agrees to hold CONSULTANT harmless for any damage to underground utilities or structures that are not called to CONSULTANT's attention or that are shown incorrectly on plans or drawings furnished for the purpose of locating such utilities and structures. CONSULTANT will take reasonable precautions to limit the damage to the project site or **Work** caused by the performance of its **Services**. CLIENT understands that some damage may necessarily occur in the normal course of performing **Services**, and that this AGREEMENT excludes repair of such damage unless specifically stated otherwise in the scope of **Services** (Exhibit A) or via a subsequent amendment to this AGREEMENT.

6. CONSTRUCTOR'S PERFORMANCE

CONSULTANT is not responsible for any **Constructors'** means, methods, techniques, or sequences during the performance of any **Constructor's Work**. CONSULTANT will not supervise or direct any **Constructors' Work** nor be liable for any failure of **Constructor** to complete its **Work** in accordance with the project's plans, specifications, and/or applicable codes, laws, and regulations. CLIENT understands and agrees that the **Constructor**, not CONSULTANT, has sole responsibility for the safety and security of persons and property at the project site.

7. CLIENT'S RESPONSIBILITIES

In addition to compensating CONSULTANT for **Services**, CLIENT agrees to:

7.1 Access. Grant or obtain free access to the project site for all equipment and personnel necessary for CONSULTANT to perform its **Services**.

7.2 Representative. Designate a representative to transmit notices and information pertaining to the **Services**, communicate CLIENT's policies and decisions, and assist as necessary in matters pertaining to the project and this AGREEMENT. CLIENT may change its representative by written notice.

7.3 Information. Supply to CONSULTANT all information and documents relevant to the **Services**. CONSULTANT may rely upon such information without independently verifying its accuracy. CLIENT will notify CONSULTANT of any known potential or possible health or safety hazard associated with the materials to be **Tested**, including their intended use, chemical composition, relevant MSDS, manufacturers' specifications and literature, and any previous **Test** results.

7.4 Project Information. Within **7 Days** of receiving CONSULTANT's written request to do so, CLIENT will provide to CONSULTANT a correct statement of the recorded legal title to the property on which the project is located and the CLIENT's and/or owner's interest therein.

8. CHANGED CONDITIONS

CONSULTANT will give to CLIENT written notice of CONSULTANT's discovery of conditions or circumstances CONSULTANT did not contemplate at the time of this AGREEMENT ("changed conditions"). CLIENT and CONSULTANT will then negotiate an appropriate amendment to this AGREEMENT. If they cannot agree upon an amendment within **30 Days** after CONSULTANT gives notice, CONSULTANT may terminate this AGREEMENT and be compensated as set forth in Section 13, "Suspension and Delay; Termination."

9. CERTIFICATIONS

CONSULTANT will not execute any **Certification** for the **Services** performed or **Work Observed, Inspected, or Tested**, unless CONSULTANT has reviewed before execution of this AGREEMENT and approved in writing the exact form of such **Certification**. CLIENT will not condition payment or the resolution of any dispute upon CONSULTANT's signing a **Certification**.

10. ALLOCATION OF RISK

10.1 Limitation of Liability. Client and Consultant agree to allocate certain risks so that, to the fullest extent permitted by law, Consultant's total aggregate liability (including its shareholders, directors, officers, employees and agents (collectively "Consultant Entities")) to Client and anyone claiming by, through, or under the Client, is limited to the greater of \$50,000 or Consultant's fees actually paid with respect to this Agreement, for any and all of Client's injuries, damages, claims, losses, expenses, costs, or claim expenses (including reasonable attorneys' and expert witness' fees) arising out of this Agreement from any cause or causes. Such causes may include, but are not limited to, Consultant's negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of express or implied warranty, contractual or common law indemnification, negligent misrepresentation, or other acts giving rise to liability based upon contract, tort, or statute. This provision takes precedence over any conflicting provisions of this Agreement.

10.2 Indemnification of CLIENT. Subject to the terms and limitations of this AGREEMENT, CONSULTANT will indemnify and hold harmless CLIENT, its shareholders, officers, directors, and employees, from and against any and all claims, suits, liabilities, damages, expenses (including without limitation reimbursement of reasonable attorney's fees and defense costs), and other losses (collectively "Losses") to the extent caused by CONSULTANT's proportional negligence in performance of this AGREEMENT. CONSULTANT's defense obligation under this indemnity paragraph is expressly limited to the reimbursement of reasonable defense costs to the extent of CONSULTANT's actual indemnity obligation hereunder.

10.3 Indemnification of CONSULTANT. CLIENT will indemnify and hold harmless **CONSULTANT Entities** from and against any and all Losses except to the extent caused by CLIENT's proportional negligence. In addition, except to the extent caused by CONSULTANT's negligence, CLIENT will defend, indemnify, and hold harmless **CONSULTANT Entities** from and against any and all Losses arising from or related to the existence, disposal, release, discharge, treatment, or transportation of **Hazardous Materials**, or the exposure of any person to **Hazardous Materials**, or the degradation of the environment due to the presence, discharge, disposal, or release of or exposure to **Hazardous Materials**.

10.4 No Personal Liability. CLIENT and CONSULTANT intend that CONSULTANT's **Services** will not subject CONSULTANT's individual employees, officers, or directors to personal liability. Therefore, and notwithstanding any other provision of this AGREEMENT, CLIENT agrees as its sole and exclusive remedy to direct or assert any claim, demand, or suit only against the business entity identified as "CONSULTANT" on the first page of this AGREEMENT.

10.5 Consequential Damages. Neither CLIENT nor CONSULTANT will be liable to the other for any special, consequential, incidental, or penal losses or damages, including, but not being limited to, losses, damages, or claims related to: the unavailability of property or facilities; shut-downs or service interruptions; loss of use, profits, revenue, or inventory; or for use charges, capital costs, or the cost of the claims of the other party and/or its customers.

10.6 Deviation from Recommendations. Unless specifically agreed otherwise in writing, CLIENT agrees that CONSULTANT bears no responsibility for ensuring CLIENT's or any other party's compliance with any specifications, procedures, or recommendations provided by CONSULTANT to CLIENT under this AGREEMENT (collectively, "Recommendations"). CLIENT hereby releases CONSULTANT from all liability arising from any other party's failure to fully comply with Recommendations, and CLIENT will defend, indemnify, and hold harmless CONSULTANT from any party's claims for losses arising from or related to CLIENT's or any other party's failure to fully comply with Recommendations.

10.7 Continuing AGREEMENT. The provisions of this Section 10, "Allocation of Risk," will survive the expiration or termination of this AGREEMENT. If CONSULTANT provides **Services** to CLIENT that the parties do not confirm through execution of a written amendment to this AGREEMENT, provisions of this Section 10 will apply to such services as if the parties had executed a written amendment.

11. INSURANCE

11.1 CONSULTANT's Insurance. If reasonably available, CONSULTANT will maintain Workers' Compensation Insurance, General Liability Insurance, Automobile Liability Insurance, and Professional Liability Insurance. If CLIENT desires additional insured status for itself or other named entities, CONSULTANT will evidence such additional insured status when commercially available.

11.2 CLIENT's Insurance. As appropriate, CLIENT will obtain builder's risk insurance or other property insurance to protect it from injury or damage to the project, and which waives all rights of subrogation against CONSULTANT. Proceeds from such insurance will be held by CLIENT as trustee and will be payable to CONSULTANT as its interests appear.

11.3 Certificates of Insurance. Upon request, CONSULTANT and CLIENT will each provide to the other certificate(s) of insurance evidencing the existence of the policies required herein. Except for professional liability and workers' compensation insurance, all policies required under this AGREEMENT shall contain a waiver of subrogation.

12. OWNERSHIP AND USE OF CLIENT DOCUMENTS AND INSTRUMENTS OF PROFESSIONAL SERVICE

12.1 CLIENT Documents. All documents provided by CLIENT will remain CLIENT's property. CONSULTANT will return all such documents to CLIENT upon CLIENT's request. CLIENT will permit CONSULTANT to make and retain copies of all CLIENT documents.

12.2 Instruments of Professional Service. Except as otherwise agreed to by CLIENT and CONSULTANT, **Instruments of Professional Service** are and shall remain CONSULTANT's property, and CONSULTANT has the right, in its sole discretion, to dispose of or retain the **Instruments of Professional Service**. CLIENT will not provide **Instruments of Professional Service** to any other person or entity without CONSULTANT's prior written consent.

12.2.1 Use by CLIENT. CLIENT has CONSULTANT's permission to reuse CONSULTANT's **Instruments of Professional Service** for purposes reasonably connected with this project, including, without limitation, the project's design and licensing requirements.

12.2.2 Use by CONSULTANT. CONSULTANT may use CONSULTANT's **Instruments of Professional Service** for any purpose. CONSULTANT owns any patentable concepts or copyrightable materials arising from CONSULTANT's **Services**.

12.3 Electronic Media. At CLIENT's request, CONSULTANT will provide **Instruments of Professional Service** to CLIENT in an electronic format, but CLIENT recognizes that CONSULTANT makes no warranties, either express or implied, about the fitness or suitability of any electronically transmitted **Instruments of Professional Service** or media. CLIENT agrees that CONSULTANT's original, hard-copy **Instruments of Professional Service** remain the actual **Instruments of Professional Service**.

12.4 Unauthorized Use. No party other than CLIENT may rely on CONSULTANT's **Instruments of Professional Service** without CONSULTANT's prior written consent and CONSULTANT's receipt of additional compensation. CLIENT waives any and all claims against CONSULTANT resulting from the unauthorized use or alteration of **Instruments of Professional Service** by CLIENT or any party obtaining **Instruments of Professional Service** through CLIENT. CLIENT will defend, indemnify, and hold harmless CONSULTANT from and against any claim, action, or proceeding brought by any party claiming to have relied upon information or opinions contained in **Instruments of Professional Service** without having obtained CONSULTANT's prior written consent to do so, and any claim arising out of or related to the unauthorized use, reuse, or modification of the **Instruments of Professional Service** by CLIENT or any party obtaining them through CLIENT.

12.5 Confidentiality. CONSULTANT will hold confidential business and technical information obtained from CLIENT or CLIENT's representatives or generated in the performance of the **Services** under this AGREEMENT and first identified in writing by CLIENT as "confidential." CONSULTANT will not disclose such information without the consent of CLIENT except to the extent required for: 1) performance of **Services** under this AGREEMENT; 2) compliance with professional or ethical standards of conduct for preservation of public health, safety, and welfare; 3) compliance with any court order or other government directive; and/or 4) protection of CONSULTANT against claims or liabilities arising from performance of **Services** under this AGREEMENT. CONSULTANT's obligation hereunder will not apply to information in the public domain or lawfully acquired from others on a nonconfidential basis.

13. SUSPENSION AND DELAY; TERMINATION

13.1 Suspension and Delay. Upon 10 **Days'** written notice to CONSULTANT, CLIENT may suspend CONSULTANT's **Services**. Upon 10 **Days'** written notice to CLIENT, CONSULTANT may terminate this AGREEMENT if CLIENT suspends the **Services** for more than 60 **Days**, in which case CLIENT will compensate CONSULTANT as provided in Section 13.4. If CLIENT suspends the **Services**, or if CLIENT or others delay CONSULTANT's **Services**, CLIENT and CONSULTANT agree to equitably adjust the time for completion of the **Services** and CONSULTANT's compensation for the additional labor, equipment, and other expenses associated with maintaining CONSULTANT's workforce for CLIENT's benefit during the delay or suspension, and any expenses incurred by CONSULTANT for demobilization and subsequent remobilization.

13.2 Termination for Convenience. CONSULTANT and CLIENT may terminate this AGREEMENT for convenience upon 10 **Days'** written notice delivered or mailed to the other party.

13.3 Termination for Cause. In the event that either party seemingly breaches this AGREEMENT, the nonbreaching party will deliver to the breaching party a written termination notice that states the basis for termination. Neither party may terminate this AGREEMENT for cause if the breaching party cures the breach within 10 **Days** after receiving the termination notice. The nonbreaching party has the right to terminate this AGREEMENT if the breaching party fails to cure the breach within the 10-**Day** period.

13.4 Payment on Termination. Following termination other than for CONSULTANT's breach of this AGREEMENT, CLIENT will pay CONSULTANT for the **Services** performed prior to the termination-notice date, and for any necessary **Services** and expenses incurred in connection with the termination, including, but not limited to, the costs of completing analyses, records, and reports necessary to document project status at the time of termination and costs associated with termination of subconsultant and/or subcontractor contracts in accordance with CONSULTANT's then-current schedule of charges in Exhibit A.

13.5 Force Majeure. In the event that CONSULTANT is prevented from completing performance of its obligations under this AGREEMENT by an occurrence beyond the control of CONSULTANT ("*Force Majeure*"), then CONSULTANT will be excused from any further performance of its obligations and undertakings. In the event of a *Force Majeure* delay that does not result in termination of the AGREEMENT, schedules will be equitably adjusted.

14. DISPUTES

CLIENT and CONSULTANT shall endeavor to negotiate all claims, disputes, and other matters in controversy between CONSULTANT and CLIENT arising out of or in any way related to this AGREEMENT in good faith for a period of 30 days from the date of notice, prior to exercising their rights at law. If the parties fail to resolve the dispute within 30 days, all claims, disputes, and other matters will be submitted to non-binding mediation before and as a condition precedent to other remedies provided by law. If a dispute at law arises related to the **Services** provided under this AGREEMENT and that dispute requires litigation, then: (a) CLIENT assents to personal jurisdiction in the State of

California; and (b) The claim will be brought and tried in judicial jurisdiction of the court of Fresno County and CLIENT waives the right to remove the action to any other county or judicial jurisdiction.

Causes of action arising out of CONSULTANT's **Services** or this AGREEMENT regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of CONSULTANT's substantial completion of **Services** on the **Project**.

15. MISCELLANEOUS

15.1 Assignment and Subcontracts. During the term of this AGREEMENT and following its expiration or termination for any reason, neither party may assign this AGREEMENT or any right or claim under it, in whole or in part, without the prior written consent of the other party, except for an assignment of proceeds for financing purposes. Any assignment that fails to comply with this paragraph will be void and of no effect. CONSULTANT may subcontract for the services of others without obtaining CLIENT's consent if CONSULTANT deems it necessary or desirable for others to perform certain **Services**.

15.2 Integration and Severability. This AGREEMENT reflects the parties' entire agreement with respect to its terms and limitations and supersedes all prior agreements, written and oral. If any portion of this AGREEMENT is found void or voidable, CLIENT and CONSULTANT will consider that portion stricken and will reform the AGREEMENT to achieve as much of the stricken portions' purpose as possible. These terms and conditions survive the completion of the **Services** and the termination of the AGREEMENT, whether termination is for cause or for convenience.

15.3 Modification of This AGREEMENT. This AGREEMENT may be modified or altered only via a written amendment that refers specifically to this AGREEMENT and is signed by an authorized representative of each party.

15.4 Notices. Any and all notices, requests, instructions, or other communications given by either party to the other must be in writing and either hand-delivered to the recipient or delivered by first-class mail (postage prepaid) or express mail (billed to sender) at the addresses given in this AGREEMENT.

15.5 Headings. The headings used in this AGREEMENT are for convenience only. They are not a part of this AGREEMENT.

15.6 Waiver. The waiver of any term, condition, or breach of this AGREEMENT will not operate as a subsequent waiver of the same term, condition, or breach.

15.7 Precedence. These GENERAL CONDITIONS take precedence over any inconsistent or contradictory provisions contained in any other agreement term, proposal, purchase order, requisition, notice to proceed, or other document regarding CONSULTANT's **Services**.

15.8 Incorporation of Provisions Required by Law. This AGREEMENT includes each provision and clause required by law, and the AGREEMENT should be read and enforced as though each such provision and clause were set forth in its entirety.

End of General Conditions



399 Lindbergh Avenue
Livermore, CA 94551
925.315.3151
www.bskassociates.com

EXHIBIT A

May 21, 2024

BSK Proposal C24000943

Ms. Melanie Koslow
Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, CA 94519

**SUBJECT: Special Inspection and Materials Testing Services
Rio Vista Elementary School Modernization and Site Improvements
611 Pacifica Avenue
Bay Point, CA 94565**

Dear Ms. Koslow:

BSK Associates is pleased to submit this proposal for Special Inspection and Materials Testing Services required for the **Rio Vista Elementary School Modernization and Site Improvements in Bay Point, CA**. We have developed this proposal package specifically with your needs in mind and based on our experience with Special Inspection requirements of the California Building Code, our review of the provided project plans and specifications (Dated 04/15/2024), correspondence with you regarding the project, and our prior experience with projects of this size and nature.

For your approval, we have included our scope of services and fee estimate, our basis for invoicing, and an authorization and acceptance form for our agreement. Rates not specifically quoted will be charged per our published Schedule of Fees. The hourly rates/charges quoted are for the project duration. It is our understanding that there is no Project Labor Agreement in-place on this project, and that the project is subject to State of California prevailing wage requirements as determined by the Department of Industrial Relations.

In order for BSK to assist you in completing DSA Forms 291, 292 and 293 (as applicable), a final approved copy of DSA Form 103 should be submitted to our office prior to our first site visit. Further, our technicians are required to note they are referring to Approved Plans during their site inspections; a copy should be made available at the project site or fabrication location.

We appreciate the opportunity to submit this proposal. If you should have further questions or comments, please give us a call. We appreciate the opportunity to work with you. We will schedule the work upon your return of our Standard Agreement.

Respectfully submitted,
BSK Associates


Veronica Rager
Project Manager


James K. Auser, PE
CSD Group Manager

Enclosure
Scope of Services and Fee Estimate
Basis for Invoicing
Standard Agreement

SCOPE OF SERVICES AND FEE ESTIMATE
Rio Vista Elementary School Modernization and Site Improvements
 611 Pacifica Avenue, Bay Point, CA

FIELD SERVICES	DAYS	HRS/DAY	HOURS	RATE	EXTENSION
Concrete Construction					
Rebar Sample and Tag (at fabricator)	2	4	8	\$130.00	\$1,040.00
Batch Plant Inspection	3	4	12	\$130.00	\$1,560.00
Concrete Sampling	3	4	12	\$130.00	\$1,560.00
Sample Pickup and Delivery	3	2	6	\$120.00	\$720.00
Trip Charge (Mileage, Bridge Toll, Parking Fees)	8			\$70.00	\$560.00
Post Installed Anchors					
Placement Observation	3	4	12	\$130.00	\$1,560.00
Proof Load Testing	3	4	12	\$130.00	\$1,560.00
Equipment Fee	3			\$70.00	\$210.00
Trip Charge (Mileage, Bridge Toll, Parking Fees)	6			\$70.00	\$420.00
Welding Observations					
Shop Welding / Material Identification	1	8	8	\$165.00	\$1,320.00
Trip Charge (Mileage, Bridge Toll, Parking Fees)	1			\$70.00	\$70.00
FIELD SERVICES ESTIMATE					\$10,580.00

LABORATORY TESTING	FREQUENCY	SETS/UNITS	RATE	EXTENSION
Laboratory Testing				
Concrete Compressive Strength Test (Set of 4)	1 Set / 100 CY	3	\$171.00	\$513.00
Tensile & Bend of Rebar #3-11	1 per material	2	\$186.00	\$372.00
LABORATORY TESTING ESTIMATE				\$885.00

BSK SERVICES ADMINISTRATION	HOURS	RATE	EXTENSION	
Principal (Contract / Performance Oversight)	0.5	\$285.00	\$142.50	
Registered Engineer (Review, support and reporting)	3	\$250.00	\$750.00	
Project Manager (Field Oversight, Daily Report Review)	5	\$235.00	\$1,175.00	
Administration (Data Processing, Report Prep., Field Coordination)	4	\$100.00	\$400.00	
Certified Payroll / DIR Upload	Monthly	2	\$300.00	\$600.00
Reports				
Final Affidavit	1 Per Permit	1	\$375.00	\$375.00
ADMINISTRATION ESTIMATE			\$3,442.50	
TOTAL BUDGET ESTIMATE			\$14,907.50	



BASIS FOR INVOICING

Rio Vista Elementary School Modernization and Site Improvements ***611 Pacifica Avenue, Bay Point, CA***

BASIS OF CHARGES:

The charge schedule listed below will be our basis for invoicing.

Show-up (No site work performed)	Bill R/T Travel Time + 1 Hour
Work up to 4 Hrs.	Bill 4 Hours
Work from 4 to 8 Hrs.	Bill 8 Hours
Work from 8 to 12 Hrs. and Saturdays	Time and One Half
Work Over 12 Hrs., Sundays and Holidays	Double Time
Travel (Portal-to-Portal)	Hourly
Parking and Toll Charges (if applicable)	Daily Rate

FEES:

Our services will be performed on a time and material basis at unit rates herein listed. Portal-to-portal charge is based from our Livermore office. Rates/charges not specifically quoted will be charged per our published Schedule of Fees. We estimate our fees for this project at **\$14,907.50**. This estimate is based upon our years of experience in this profession, but it is an estimate only. We endeavor to limit our charges to this estimate; however, events beyond our control may affect total cost. For example; if the work progresses quicker than anticipated, fees could be considerably less; or, if the work progresses slower than anticipated, our fees may exceed this estimate.

It is our practice to notify you if it appears our fees will exceed our estimate, but due to the timing and nature of our services and to ensure that your project is not delayed, this may not always be possible. Our invoices however will serve as an update of our progress as well as fees charged versus our estimate. Invoices are payable upon receipt and deemed delinquent if not paid within 30 days. Delinquent invoices may be subject to interest/service charges, and collection expenses including attorney's fees, at our election. As necessary to accommodate the construction schedule, BSK may use contract special inspectors to augment our staff. Inspections performed by contract providers will be billed as specified for BSK employees, herein, and at the rates included in the Fee Estimate.

LIMITATIONS:

BSK Associates provides special inspection services to assist you in verifying that the work is in substantial conformance to the project documents and as required by the California Building Code. These services shall not be construed as acceptance of the work or relieve the contractor in any way from his/her obligations and responsibilities as outlined in the applicable construction documents. BSK assumes no responsibility for the safety of others on the jobsite or the methods and means of construction. BSK will make every effort to respond to the emergent needs of your project, to assure better service we ask that you schedule inspection/testing activities at least 24 hours in advance. To avoid show-up charges, cancel such requests at least four hours in advance of our arrival time. Section 1701 of the CBC requires the special inspection agency to file a final report for the project. The report will be issued upon complete reconciliation of your account. This proposal for construction services shall be valid for not more than sixty (60) days from the date of presentation.



INVOICE AND REPORT DISTRIBUTION

BSK Associates will issue our invoice to the following firm/contact. Please provide a separate accounts payable (AP) contact as appropriate:

Company: Mt. Diablo Unified School
District
Address: 1936 Carlotta Drive
City, State, Zip: Concord, CA 94519
Contact Name: Ms. Melanie Koslow
Contact Phone: 925-596-0446
E-Mail: koslowm@mdusd.org

AP Contact: _____
AP Phone: _____
AP E-Mail: _____

BSK will issue special inspection and materials testing reports by electronic delivery to the following recipients. If additional recipients are desired, please complete and return this form accordingly:

Client:

Company: Mt. Diablo Unified School
District
Address: 1936 Carlotta Drive
City, State, Zip: Concord, CA, 94519
Contact Name: Ms. Melanie Koslow
Contact Phone: 925-596-0446
E-Mail: koslowm@mdusd.org

Other:

Company: _____
Address: _____
City, State, Zip: _____
Contact Name: _____
Contact Phone: _____
Contact E-Mail: _____

Building Department:

Agency Name: _____
Address: _____
City, State, Zip: _____
Contact Name: _____
Contact Phone: _____
Contact E-Mail: _____

Other:

Company: _____
Address: _____
City, State, Zip: _____
Contact Name: _____
Contact Phone: _____
Contact E-Mail: _____

DSA PROJECTS

BSK uploads DSA project deliverables to DSA Box system as required by the Division of the State Architect and California Building Code. In order to provide this service, our firm must be properly listed on the DSA Form 102-IC for each project. Please inform your project team to include the information below for the Laboratory of Record.

Laboratory of Record BSK Associates
LEA #32
License #59941
Name: James Auser, PE & Tim Rodriguez
Email: jauser@bskassociates.com & trodriguez@bskassociates.com
Phone: 925.315.3151



**AGREEMENT FOR CONSTRUCTION MATERIALS TESTING ENGINEERING &
TESTING SERVICES**

THIS AGREEMENT, effective as of this _____ day of _____ 20____, is by and between Mt. Diablo Unified School District ("Client") and BSK Associates ("Company").

THIS PROJECT is generally described as:

Special Inspection and Materials Testing Services

Rio Vista Elementary School Modernization and Site Improvements

and is located at:

611 Pacifica Avenue

Bay Point, CA ("Project Site")

THIS AGREEMENT consists of the following documents which are incorporated herein by reference:

- PROPOSAL NO. C24000943, DATED MAY 21, 2024
- GENERAL CONDITIONS FOR CONSTRUCTION MATERIALS ENGINEERING & TESTING SERVICES

Consultant agrees to perform the Services set forth in this Agreement and in accordance with its terms, including all attachments incorporated herein by reference. This agreement may not be modified or altered, except in writing as specifically described in this Agreement.

CLIENT:

COMPANY (BSK):

Signature: _____



Print Name: _____

ADRIAN VARGAS

James K. Auser, PE

Title: _____

CHIEF BUSINESS OFFICER

CSD Group Manager

Company: _____

MT. DIABLO UNIFIED SCHOOL
DISTRICT

BSK Associates

Address: _____

1936 CARLOTTA DRIVE

399 Lindbergh Avenue

CONCORD, CA 94519

Livermore, CA 94551

Date: _____

6/14/2024



GENERAL CONDITIONS FOR CONSTRUCTION MATERIALS ENGINEERING AND TESTING SERVICES

1. DEFINITIONS

1.1 Certification. CONSULTANT's expression of a professional opinion based upon the **services** CONSULTANT performed. A certification does not constitute a warranty or guarantee, either express or implied.

1.2 Constructor. The **managing general constructor (MGC)** and other constructor(s), including its/their subcontracting constructors (**subconstructors**) of every tier, retained to perform construction **work** on the project for which CONSULTANT is providing **services** under this AGREEMENT.

1.3 CONSULTANT Entities. The CONSULTANT and its subconsultants, subcontractors, and agents, and all of their respective shareholders, directors, officers, employees, and agents, and their heirs and assigns.

1.4 Day(s). Calendar day(s) unless otherwise stated.

1.5 Hazardous Materials. Contaminants regulated by a public authority, typically because they are known or suspected to jeopardize human health and safety, through exposure of some kind, e.g., contact, inhalation, ingestion, absorption, or radiation. Such materials are listed in various federal, state, and local statutes and regulations. This also includes any toxic substances, chemicals, radioactivity, pollutants, or other materials, in whatever form or state, known or suspected to impair the environment in any way whatsoever.

1.6 Inspect, Inspection. Visual determination of conformance with specific requirements.

1.7 Instruments of Professional Service. All documents and information – e.g., letters, memoranda, reports, boring logs, maps, field data, field notes, drawings and specifications, and **test data** – prepared by CONSULTANT in the course of the Services.

1.8 Managing General Constructor (MGC). The **constructor** that has overall responsibility for project-site activities, including site safety and security, and is in charge of all other **constructors** and **subconstructors** hired for the project.

1.9 Observation, Observe. On the basis of CONSULTANT's professional judgment, the act of visual evaluation or visually evaluating general conformance with requirements.

1.10 Services. The professional **services** provided by CONSULTANT under this AGREEMENT, including **services** described in the scope of **services** included in Exhibit A and any written task order or amendment to this AGREEMENT.

1.11 Subconstructor. A constructor hired by the **managing general constructor** or another **constructor** or **subconstructor**.

1.12 Test(s), Testing. Measurement, examination, and other activities to assess the characteristics or performance of materials.

1.13 Work. A **constructor's**, or **subconstructor's**, labor, materials, equipment, and constructed results.

2. ACCEPTANCE OF TERMS AND CONDITIONS

Unless otherwise specifically stated by CLIENT in writing, CLIENT's request that CONSULTANT initiate **Services** will constitute CLIENT's acceptance of this AGREEMENT and all of its terms and conditions. Any additional or different terms that CLIENT provides in any subsequent acknowledgment, purchase order, task order, or other document that vary from any of the terms herein are hereby objected to and rejected. Any such terms proposed by CLIENT, whether by offer or acceptance, shall be void unless CONSULTANT expressly agrees to them in writing.

3. SCOPE OF SERVICES

3.1 Services Provided; Independent Contractor. CONSULTANT will provide the **Services** set forth in the scope of **services** (Exhibit A) as an independent contractor.

3.2 Authority of CONSULTANT. CONSULTANT will report to CLIENT data and results of **Observation, Inspection, and Testing** as set forth in the scope of **services** (Exhibit A). CONSULTANT will report to CLIENT or CLIENT's representative **Observed** or **Inspected** work that, in CONSULTANT's opinion, fails to conform to project plans and specifications. CONSULTANT has no right or responsibility to approve, accept, reject, or stop **Work** of any **Constructor, Subconstructor**, or other agent of CLIENT. No action of CONSULTANT or CONSULTANT's site representative(s) shall be construed by any party as revoking, altering, enlarging, relaxing, or releasing any

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requirement of the plans, specifications, or codes applicable to the project or any agreement between CLIENT and others. Such rights are reserved solely for CLIENT.

3.3 Referenced Standards. CONSULTANT will perform **Observations, Inspections, and Tests**, in general accordance with the applicable standards referenced by CONSULTANT. CONSULTANT makes no representation about compliance with any other standards.

3.4 Variation of Material Characteristics and Conditions. CONSULTANT's **Observations** and standardized sampling, **Inspection**, and **Testing** procedures indicate conditions of materials and construction activities only at the precise location where and precise time when CONSULTANT performed **Services**. CLIENT recognizes that conditions of materials and construction activities at other locations may vary from those measured, **Observed**, or **Inspected**, and that conditions at one location and time cannot be relied on to indicate the conditions at other locations and times, even when the materials involved appear to be identical. Notwithstanding the foregoing, CONSULTANT may make inferences based upon the information derived from these procedures to formulate professional opinions about conditions in other areas. CONSULTANT is responsible only for those data, interpretations, and recommendations about the actual materials and construction activities it **Observes, Inspects, samples, or Tests**. Even if performed on a continuous basis, **Services** do not and should not be interpreted to mean that CONSULTANT is **Observing, Inspecting, or Testing** all materials on the project. CONSULTANT is not responsible for other parties' interpretations or use of the information CONSULTANT developed.

3.5 Scheduling and Frequency of Observations, Inspections, and Testing. CLIENT acknowledges that CLIENT – directly or indirectly through its designee – has the sole right and sole responsibility to determine the extent, frequency, and scheduling of **Observations, Inspections, and Testing** performed by CONSULTANT. Accordingly, CLIENT also acknowledges that CONSULTANT bears no responsibility for damages that may accrue because CONSULTANT did not perform **Observations, Inspections, or Testing** that CLIENT failed to request or schedule.

3.6 Changes in Scope. CLIENT may request changes to the scope of **Services** (Exhibit A). Any such change, including any change in CONSULTANT's compensation or time of performance, will be incorporated into this AGREEMENT only when it takes the form of a written amendment signed by CLIENT and CONSULTANT or, if agreed to orally, only when it is confirmed by CLIENT and CONSULTANT in writing within 10 **Days** of the date of the oral agreement.

3.7 Excluded Services. CONSULTANT's **Services** include only those **Services** specified in the scope of **Services** (Exhibit A). CLIENT expressly waives any claim against CONSULTANT relating to any additional **Services** that CONSULTANT recommended, but that CLIENT either failed to authorize or instructed CONSULTANT to not perform.

3.8 Fiduciary Responsibility. This AGREEMENT does not create a fiduciary responsibility to CLIENT by CONSULTANT or to CONSULTANT by CLIENT.

4. PAYMENTS TO CONSULTANT

CLIENT agrees to pay CONSULTANT for **Services** rendered in accordance with the payment terms provided in this Agreement and/or any written amendments hereto. Invoices will be submitted at the completion of **Services** or on a two-week or four-week basis, at the discretion of Consultant. Payment is due upon receipt of invoice. Amounts unpaid 30 days after the due date shall bear interest at the lesser rate of 18% per annum or the maximum interest rate allowed by law from the date of the invoice. CLIENT shall pay all expenses incurred by CONSULTANT associated with placing a lien or otherwise incurred in collecting any delinquent amount, including, without limitation attorneys' and filing fees. CLIENT shall pay all costs of CONSULTANT in enforcing its rights hereunder, including, without limitation, attorneys' and filing fees and expenses.

5. PERFORMANCE STANDARD

5.1 Professional Standards. CONSULTANT shall, in performing its **Services**, exercise the same degree of skill and care ordinarily exercised under similar circumstances and conditions by practicing professionals undertaking similar services in the same locality at the same time. Subsequent standards will not be applied in judging CONSULTANT's **Services**. CLIENT agrees that the **Services** will be rendered without any warranty or guarantee, whether expressed or implied. CONSULTANT will not be liable for the interpretation by others of data or information CONSULTANT develops. CONSULTANT's **Services** do not constitute **Observing, Inspecting, or verifying** placement of all materials of the project.

5.2 Sampling, Observation, Inspection, and Test Locations. Unless specifically stated otherwise, the scope of **Services** (Exhibit A) intentionally excludes surveying the project site or precisely identifying sampling, **Observation, Inspection, or Test** locations, depths, or elevations. In accordance with customary practice, CONSULTANT will base sampling, **Observation, Inspection, and Test** locations, depths, and elevations on field estimates and information furnished by CLIENT and its representatives. Unless stated otherwise in CONSULTANT's report(s), such locations, depths, and elevations are approximate.

5.3 Sample Disposal. CONSULTANT will dispose of samples immediately after submitting the report covering those samples. If CLIENT prefers CONSULTANT to store samples for a longer period or transfer them to another

party, CLIENT shall submit to CONSULTANT a timely written notice through which CLIENT also agrees to appropriately compensate CONSULTANT for the additional service.

5.4 Buried Utilities and Structures; Property/Work Restoration. If the **Services** require borings, test pits, or other invasive subsurface-exploratory **Services**, CLIENT will provide to CONSULTANT all information it possesses about the location and nature of underground utilities and structures. To reduce the risk of damage or injury to underground utilities and structures, CONSULTANT will rely on CLIENT-furnished information and will also contact an appropriate utility locator. CLIENT agrees to hold CONSULTANT harmless for any damage to underground utilities or structures that are not called to CONSULTANT's attention or that are shown incorrectly on plans or drawings furnished for the purpose of locating such utilities and structures. CONSULTANT will take reasonable precautions to limit the damage to the project site or **Work** caused by the performance of its **Services**. CLIENT understands that some damage may necessarily occur in the normal course of performing **Services**, and that this AGREEMENT excludes repair of such damage unless specifically stated otherwise in the scope of **Services** (Exhibit A) or via a subsequent amendment to this AGREEMENT.

6. CONSTRUCTOR'S PERFORMANCE

CONSULTANT is not responsible for any **Constructors'** means, methods, techniques, or sequences during the performance of any **Constructor's Work**. CONSULTANT will not supervise or direct any **Constructors' Work** nor be liable for any failure of **Constructor** to complete its **Work** in accordance with the project's plans, specifications, and/or applicable codes, laws, and regulations. CLIENT understands and agrees that the **Constructor**, not CONSULTANT, has sole responsibility for the safety and security of persons and property at the project site.

7. CLIENT'S RESPONSIBILITIES

In addition to compensating CONSULTANT for **Services**, CLIENT agrees to:

7.1 Access. Grant or obtain free access to the project site for all equipment and personnel necessary for CONSULTANT to perform its **Services**.

7.2 Representative. Designate a representative to transmit notices and information pertaining to the **Services**, communicate CLIENT's policies and decisions, and assist as necessary in matters pertaining to the project and this AGREEMENT. CLIENT may change its representative by written notice.

7.3 Information. Supply to CONSULTANT all information and documents relevant to the **Services**. CONSULTANT may rely upon such information without independently verifying its accuracy. CLIENT will notify CONSULTANT of any known potential or possible health or safety hazard associated with the materials to be **Tested**, including their intended use, chemical composition, relevant MSDS, manufacturers' specifications and literature, and any previous **Test** results.

7.4 Project Information. Within 7 **Days** of receiving CONSULTANT's written request to do so, CLIENT will provide to CONSULTANT a correct statement of the recorded legal title to the property on which the project is located and the CLIENT's and/or owner's interest therein.

8. CHANGED CONDITIONS

CONSULTANT will give to CLIENT written notice of CONSULTANT's discovery of conditions or circumstances CONSULTANT did not contemplate at the time of this AGREEMENT ("changed conditions"). CLIENT and CONSULTANT will then negotiate an appropriate amendment to this AGREEMENT. If they cannot agree upon an amendment within 30 **Days** after CONSULTANT gives notice, CONSULTANT may terminate this AGREEMENT and be compensated as set forth in Section 13, "Suspension and Delay; Termination."

9. CERTIFICATIONS

CONSULTANT will not execute any **Certification** for the **Services** performed or **Work Observed, Inspected, or Tested**, unless CONSULTANT has reviewed before execution of this AGREEMENT and approved in writing the exact form of such **Certification**. CLIENT will not condition payment or the resolution of any dispute upon CONSULTANT's signing a **Certification**.

10. ALLOCATION OF RISK

10.1 Limitation of Liability. Client and Consultant agree to allocate certain risks so that, to the fullest extent permitted by law, Consultant's total aggregate liability (including its shareholders, directors, officers, employees and agents (collectively "Consultant Entities")) to Client and anyone claiming by, through, or under the Client, is limited to the greater of \$50,000 or Consultant's fees actually paid with respect to this Agreement, for any and all of Client's injuries, damages, claims, losses, expenses, costs, or claim expenses (including reasonable attorneys' and expert witness' fees) arising out of this Agreement from any cause or causes. Such causes may include, but are not limited to, Consultant's negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of express or implied warranty, contractual or common law indemnification, negligent misrepresentation, or other acts giving rise to liability based upon contract, tort, or statute. This provision takes precedence over any conflicting provisions of this Agreement.

10.2 Indemnification of CLIENT. Subject to the terms and limitations of this AGREEMENT, CONSULTANT will indemnify and hold harmless CLIENT, its shareholders, officers, directors, and employees, from and against any and all claims, suits, liabilities, damages, expenses (including without limitation reimbursement of reasonable attorney's fees and defense costs), and other losses (collectively "Losses") to the extent caused by CONSULTANT's proportional negligence in performance of this AGREEMENT. CONSULTANT's defense obligation under this indemnity paragraph is expressly limited to the reimbursement of reasonable defense costs to the extent of CONSULTANT's actual indemnity obligation hereunder.

10.3 Indemnification of CONSULTANT. CLIENT will indemnify and hold harmless **CONSULTANT Entities** from and against any and all Losses except to the extent caused by CLIENT's proportional negligence. In addition, except to the extent caused by CONSULTANT's negligence, CLIENT will defend, indemnify, and hold harmless **CONSULTANT Entities** from and against any and all Losses arising from or related to the existence, disposal, release, discharge, treatment, or transportation of **Hazardous Materials**, or the exposure of any person to **Hazardous Materials**, or the degradation of the environment due to the presence, discharge, disposal, or release of or exposure to **Hazardous Materials**.

10.4 No Personal Liability. CLIENT and CONSULTANT intend that CONSULTANT's **Services** will not subject CONSULTANT's individual employees, officers, or directors to personal liability. Therefore, and notwithstanding any other provision of this AGREEMENT, CLIENT agrees as its sole and exclusive remedy to direct or assert any claim, demand, or suit only against the business entity identified as "CONSULTANT" on the first page of this AGREEMENT.

10.5 Consequential Damages. Neither CLIENT nor CONSULTANT will be liable to the other for any special, consequential, incidental, or penal losses or damages, including, but not being limited to, losses, damages, or claims related to: the unavailability of property or facilities; shut-downs or service interruptions; loss of use, profits, revenue, or inventory; or for use charges, capital costs, or the cost of the claims of the other party and/or its customers.

10.6 Deviation from Recommendations. Unless specifically agreed otherwise in writing, CLIENT agrees that CONSULTANT bears no responsibility for ensuring CLIENT's or any other party's compliance with any specifications, procedures, or recommendations provided by CONSULTANT to CLIENT under this AGREEMENT (collectively, "Recommendations"). CLIENT hereby releases CONSULTANT from all liability arising from any other party's failure to fully comply with Recommendations, and CLIENT will defend, indemnify, and hold harmless CONSULTANT from any party's claims for losses arising from or related to CLIENT's or any other party's failure to fully comply with Recommendations.

10.7 Continuing AGREEMENT. The provisions of this Section 10, "Allocation of Risk," will survive the expiration or termination of this AGREEMENT. If CONSULTANT provides **Services** to CLIENT that the parties do not confirm through execution of a written amendment to this AGREEMENT, provisions of this Section 10 will apply to such services as if the parties had executed a written amendment.

11. INSURANCE

11.1 CONSULTANT's Insurance. If reasonably available, CONSULTANT will maintain Workers' Compensation Insurance, General Liability Insurance, Automobile Liability Insurance, and Professional Liability Insurance. If CLIENT desires additional insured status for itself or other named entities, CONSULTANT will evidence such additional insured status when commercially available.

11.2 CLIENT's Insurance. As appropriate, CLIENT will obtain builder's risk insurance or other property insurance to protect it from injury or damage to the project, and which waives all rights of subrogation against CONSULTANT. Proceeds from such insurance will be held by CLIENT as trustee and will be payable to CONSULTANT as its interests appear.

11.3 Certificates of Insurance. Upon request, CONSULTANT and CLIENT will each provide to the other certificate(s) of insurance evidencing the existence of the policies required herein. Except for professional liability and workers' compensation insurance, all policies required under this AGREEMENT shall contain a waiver of subrogation.

12. OWNERSHIP AND USE OF CLIENT DOCUMENTS AND INSTRUMENTS OF PROFESSIONAL SERVICE

12.1 CLIENT Documents. All documents provided by CLIENT will remain CLIENT's property. CONSULTANT will return all such documents to CLIENT upon CLIENT's request. CLIENT will permit CONSULTANT to make and retain copies of all CLIENT documents.

12.2 Instruments of Professional Service. Except as otherwise agreed to by CLIENT and CONSULTANT, **Instruments of Professional Service** are and shall remain CONSULTANT's property, and CONSULTANT has the right, in its sole discretion, to dispose of or retain the **Instruments of Professional Service**. CLIENT will not provide **Instruments of Professional Service** to any other person or entity without CONSULTANT's prior written consent.

12.2.1 Use by CLIENT. CLIENT has CONSULTANT's permission to reuse CONSULTANT's **Instruments of Professional Service** for purposes reasonably connected with this project, including, without limitation, the project's design and licensing requirements.

12.2.2 Use by CONSULTANT. CONSULTANT may use CONSULTANT's **Instruments of Professional Service** for any purpose. CONSULTANT owns any patentable concepts or copyrightable materials arising from CONSULTANT's **Services**.

12.3 Electronic Media. At CLIENT's request, CONSULTANT will provide **Instruments of Professional Service** to CLIENT in an electronic format, but CLIENT recognizes that CONSULTANT makes no warranties, either express or implied, about the fitness or suitability of any electronically transmitted **Instruments of Professional Service** or media. CLIENT agrees that CONSULTANT's original, hard-copy **Instruments of Professional Service** remain the actual **Instruments of Professional Service**.

12.4 Unauthorized Use. No party other than CLIENT may rely on CONSULTANT's **Instruments of Professional Service** without CONSULTANT's prior written consent and CONSULTANT's receipt of additional compensation. CLIENT waives any and all claims against CONSULTANT resulting from the unauthorized use or alteration of **Instruments of Professional Service** by CLIENT or any party obtaining **Instruments of Professional Service** through CLIENT. CLIENT will defend, indemnify, and hold harmless CONSULTANT from and against any claim, action, or proceeding brought by any party claiming to have relied upon information or opinions contained in **Instruments of Professional Service** without having obtained CONSULTANT's prior written consent to do so, and any claim arising out of or related to the unauthorized use, reuse, or modification of the **Instruments of Professional Service** by CLIENT or any party obtaining them through CLIENT.

12.5 Confidentiality. CONSULTANT will hold confidential business and technical information obtained from CLIENT or CLIENT's representatives or generated in the performance of the **Services** under this AGREEMENT and first identified in writing by CLIENT as "confidential." CONSULTANT will not disclose such information without the consent of CLIENT except to the extent required for: 1) performance of **Services** under this AGREEMENT; 2) compliance with professional or ethical standards of conduct for preservation of public health, safety, and welfare; 3) compliance with any court order or other government directive; and/or 4) protection of CONSULTANT against claims or liabilities arising from performance of **Services** under this AGREEMENT. CONSULTANT's obligation hereunder will not apply to information in the public domain or lawfully acquired from others on a nonconfidential basis.

13. SUSPENSION AND DELAY; TERMINATION

13.1 Suspension and Delay. Upon 10 **Days'** written notice to CONSULTANT, CLIENT may suspend CONSULTANT's **Services**. Upon 10 **Days'** written notice to CLIENT, CONSULTANT may terminate this AGREEMENT if CLIENT suspends the **Services** for more than 60 **Days**, in which case CLIENT will compensate CONSULTANT as provided in Section 13.4. If CLIENT suspends the **Services**, or if CLIENT or others delay CONSULTANT's **Services**, CLIENT and CONSULTANT agree to equitably adjust the time for completion of the **Services** and CONSULTANT's compensation for the additional labor, equipment, and other expenses associated with maintaining CONSULTANT's workforce for CLIENT's benefit during the delay or suspension, and any expenses incurred by CONSULTANT for demobilization and subsequent remobilization.

13.2 Termination for Convenience. CONSULTANT and CLIENT may terminate this AGREEMENT for convenience upon 10 **Days'** written notice delivered or mailed to the other party.

13.3 Termination for Cause. In the event that either party seemingly breaches this AGREEMENT, the nonbreaching party will deliver to the breaching party a written termination notice that states the basis for termination. Neither party may terminate this AGREEMENT for cause if the breaching party cures the breach within 10 **Days** after receiving the termination notice. The nonbreaching party has the right to terminate this AGREEMENT if the breaching party fails to cure the breach within the 10-**Day** period.

13.4 Payment on Termination. Following termination other than for CONSULTANT's breach of this AGREEMENT, CLIENT will pay CONSULTANT for the **Services** performed prior to the termination-notice date, and for any necessary **Services** and expenses incurred in connection with the termination, including, but not limited to, the costs of completing analyses, records, and reports necessary to document project status at the time of termination and costs associated with termination of subconsultant and/or subcontractor contracts in accordance with CONSULTANT's then-current schedule of charges in Exhibit A.

13.5 Force Majeure. In the event that CONSULTANT is prevented from completing performance of its obligations under this AGREEMENT by an occurrence beyond the control of CONSULTANT ("*Force Majeure*"), then CONSULTANT will be excused from any further performance of its obligations and undertakings. In the event of a *Force Majeure* delay that does not result in termination of the AGREEMENT, schedules will be equitably adjusted.

14. DISPUTES

CLIENT and CONSULTANT shall endeavor to negotiate all claims, disputes, and other matters in controversy between CONSULTANT and CLIENT arising out of or in any way related to this AGREEMENT in good faith for a period of 30 days from the date of notice, prior to exercising their rights at law. If the parties fail to resolve the dispute within 30 days, all claims, disputes, and other matters will be submitted to non-binding mediation before and as a condition precedent to other remedies provided by law. If a dispute at law arises related to the **Services** provided under this AGREEMENT and that dispute requires litigation, then: (a) CLIENT assents to personal jurisdiction in the State of

California; and (b) The claim will be brought and tried in judicial jurisdiction of the court of Fresno County and CLIENT waives the right to remove the action to any other county or judicial jurisdiction.

Causes of action arising out of CONSULTANT's **Services** or this AGREEMENT regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of CONSULTANT's substantial completion of **Services** on the **Project**.

15. MISCELLANEOUS

15.1 Assignment and Subcontracts. During the term of this AGREEMENT and following its expiration or termination for any reason, neither party may assign this AGREEMENT or any right or claim under it, in whole or in part, without the prior written consent of the other party, except for an assignment of proceeds for financing purposes. Any assignment that fails to comply with this paragraph will be void and of no effect. CONSULTANT may subcontract for the services of others without obtaining CLIENT's consent if CONSULTANT deems it necessary or desirable for others to perform certain **Services**.

15.2 Integration and Severability. This AGREEMENT reflects the parties' entire agreement with respect to its terms and limitations and supersedes all prior agreements, written and oral. If any portion of this AGREEMENT is found void or voidable, CLIENT and CONSULTANT will consider that portion stricken and will reform the AGREEMENT to achieve as much of the stricken portions' purpose as possible. These terms and conditions survive the completion of the **Services** and the termination of the AGREEMENT, whether termination is for cause or for convenience.

15.3 Modification of This AGREEMENT. This AGREEMENT may be modified or altered only via a written amendment that refers specifically to this AGREEMENT and is signed by an authorized representative of each party.

15.4 Notices. Any and all notices, requests, instructions, or other communications given by either party to the other must be in writing and either hand-delivered to the recipient or delivered by first-class mail (postage prepaid) or express mail (billed to sender) at the addresses given in this AGREEMENT.

15.5 Headings. The headings used in this AGREEMENT are for convenience only. They are not a part of this AGREEMENT.

15.6 Waiver. The waiver of any term, condition, or breach of this AGREEMENT will not operate as a subsequent waiver of the same term, condition, or breach.

15.7 Precedence. These GENERAL CONDITIONS take precedence over any inconsistent or contradictory provisions contained in any other agreement term, proposal, purchase order, requisition, notice to proceed, or other document regarding CONSULTANT's **Services**.

15.8 Incorporation of Provisions Required by Law. This AGREEMENT includes each provision and clause required by law, and the AGREEMENT should be read and enforced as though each such provision and clause were set forth in its entirety.

End of General Conditions