

# **CONSULTANT SERVICES AGREEMENT**

## **(GEOTECHNICAL SERVICES)**

This AGREEMENT is made and entered into this [REDACTED] day of [REDACTED] in the year 20[REDACTED] (“EFFECTIVE DATE”), by and between the Las Virgenes Unified School District, hereinafter referred to as the “DISTRIC**T**”, and [REDACTED], hereinafter referred to as “CONSULTANT”. The DISTRIC**T** and the CONSULTANT are sometimes referred to herein singularly as a “PARTY” and collectively as the “PARTIES”. This AGREEMENT is made with reference to the following facts:

**WHEREAS**, the DISTRIC**T** requires specialized services and/or advice in connection with certain engineering and/or surveying matters where such services and advice are not available to the DISTRIC**T** without cost either internally or from other public agencies;

**WHEREAS**, CONSULTANT is specially experienced and competent to provide to the DISTRIC**T**, certain specialized services and/or advice in one or more of the foregoing areas;

**WHEREAS**, DISTRIC**T** desires to obtain specialized services and/or advice for [REDACTED], hereinafter referred to as the “PROJECT”; and

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

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

### **ARTICLE I**

#### **SCOPE AND SERVICES TO BE PROVIDED BY CONSULTANT**

1. Services to be Provided by the CONSULTANT. The CONSULTANT shall perform its services hereunder in a professional manner, using the degree of care and skill ordinarily exercised by, and consistent with, the current professional practices and standards of a professional (providing services like the CONSULTANT) practicing in California. The CONSULTANT shall provide to the DISTRIC**T** on the terms set forth herein all the services articulated in this AGREEMENT and as set forth in the CONSULTANT’s PROPOSAL which shall be attached hereto and incorporated herein as **EXHIBIT “A”** (the “PROPOSAL”). In the event of a discrepancy, inconsistency, conflict or other difference between the terms of the CONSULTANT’s PROPOSAL with this AGREEMENT, the PARTIES agree that the terms of this AGREEMENT shall govern and be controlling. The term of this Agreement shall be

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2. CONSULTANT’s Certifications, Representations and Warranties. CONSULTANT makes the following certifications, representations, and warranties for the benefit of the DISTRIC**T** and CONSULTANT acknowledges and agrees that the DISTRIC**T**, in deciding to engage CONSULTANT pursuant to this AGREEMENT, is relying upon the truth and validity

of the following certifications, representations and warranties and their effectiveness throughout the term of this AGREEMENT and the course of CONSULTANT's engagement hereunder:

- a. CONSULTANT is qualified in all respects to provide to the DISTRICT all of the services contemplated by this AGREEMENT and, to the extent required by any applicable laws, CONSULTANT has all such licenses and/or governmental approvals as would be required to carry out and perform for the benefit of the DISTRICT, such services as are called for hereunder.
- b. CONSULTANT, in providing the services and in otherwise carrying out its obligations to the DISTRICT under this AGREEMENT, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including worker's compensation and equal protection and non-discrimination laws.
- c. If applicable, CONSULTANT shall be properly registered with the Department of Industrial Relations and qualified to perform public works in accordance with Labor Code sections 1725.5 and 1771.1 at all times during the term of this AGREEMENT.

**ARTICLE II**

**CONSULTANT'S SERVICES AND RESPONSIBILITIES**

1. Scope of Services. The PARTIES shall check the box or boxes herein below that detail the basic services that must be provided by the CONSULTANT to complete the PROJECT. If no boxes are checked each and every section of this Article II shall be applicable to the PROJECT and shall be completed by the CONSULTANT. All other basic services that are required by the DISTRICT for the completion of PROJECT shall be set forth in the EXHIBIT "A". CONSULTANT shall perform the following services to complete the PROJECT:

- Soils Investigation and Report: All sections of this Article II are applicable to the PROJECT except Article II, Section 4 and Article II, Section 5.
- Soils Investigation and Report, and Construction Services: All sections of this Article II are applicable to the PROJECT except Article II, Section 4.
- Soils Investigation and Report, Foundation Engineering, and Construction Services: All sections of this Article II are applicable to the PROJECT.

2. DRILLING AND SAMPLING METHODS:

a. The location and depth of the borings proposed by the CONSULTANT shall be shown on a sketch accompanying the CONSULTANT's PROPOSAL. If the CONSULTANT finds it necessary to change the location or depth of any of

these proposed borings, the DISTRICT shall be notified and a new location or depth shall be agreed upon between the DISTRICT and the CONSULTANT.

b. If unusual conditions are encountered including, but not limited to, unanticipated materials which cannot be penetrated by standard sampling equipment, the CONSULTANT shall immediately consult with the DISTRICT. The CONSULTANT shall take such measures as are required to obtain the necessary information, subject to the DISTRICT's approval.

c. The CONSULTANT shall advise the DISTRICT as to any further exploration and testing required to obtain information that the CONSULTANT requires for a professional interpretation of subsoil conditions at the PROJECT site and shall perform such additional work as authorized by the DISTRICT. The extent of exploration undertaken shall be consistent with that necessary to perform services consistent with the standards of CONSULTANT's profession and that which would be necessary given the size and scope of the PROJECT consistent with the terms of this AGREEMENT. Sampling operations for both disturbed and undisturbed samples shall be in accordance with recommended American Society for Testing Materials (ASTM) Standards and other procedures, and as necessary to produce the information required for the Report(s).

d. Unless otherwise stipulated, drilling and sampling will be performed in accordance with current applicable ASTM Standards and other standards including, but not limited to, ASTM Standards D1586, D1587 and D2113.

e. Samples of soil shall be taken at the ground surface, at two feet below existing grade and at each identifiable change in condition, but not further apart than five feet in each of the borings unless otherwise specified on the boring drawing(s). Where clayey cohesive soils are encountered, thin-walled tube samples shall be taken of representative strata. Split-spoon samples shall be placed in sealed jars labeled with the following information: (1) boring numbers, (2) sample number, (3) sample depth, (4) blows per increment required to drive sample as per applicable standards, (5) date, (6) PROJECT name, and (7) CONSULTANT's name.

f. Rock cores shall be not less than one and one eighth (1-1/8) inches in diameter, and shall be placed in core boxes properly labeled as indicated above.

g. The samples shall be preserved and field logs prepared by a California Registered Geotechnical Engineer.

h. The CONSULTANT shall notify the DISTRICT before drilling equipment is removed from the site and advise the DISTRICT as to the field description of soil conditions encountered. The CONSULTANT shall perform such additional borings or other exploration as may be authorized by the DISTRICT.

3. FIELD AND LABORATORY REPORTS:

The CONSULTANT shall prepare field and laboratory reports as follows:

- a. All segments of the reports covering the investigations and analyses shall be made on white paper, 8-1/2 x 11 inches, suitable for photocopying and bound in booklet form. If larger drawings are necessary, they shall be folded and bound into the booklet. Written reports and analyses shall be on the CONSULTANT's letterhead. Each drawing shall carry a title block which contains the PROJECT name and location, the Registered Geotechnical Engineer's name and address, the date of the subsurface investigation, the date of the drawings, the initials of the person in charge of the crew making the investigation, the initials of the drafter, and the initials of the California Registered Professional Engineer who is the responsible checker.
- b. All data required to be recorded according to the American Society for Testing Materials ("ASTM") Standards or other standard test methods employed shall be obtained, recorded in the field and referenced to boring numbers; soil shall be classified in the field logs in accordance with current applicable ASTM Standards and other standards, including but not limited to ASTM Standard D2488, but the classification for final logs shall be based on the field information, plus results of tests plus further inspection of samples in the laboratory by CONSULTANT.
- c. Include with the report a chart illustrating the soil classification criteria and the terminology and symbols used on the boring logs.
- d. Identify the ASTM Standards or other recognized standard sampling and test methods utilized.
- e. Provide a plot plan giving dimensioned locations of test borings.
- f. Provide vertical sections for each boring plotted and graphically presented showing number of borings, sampling method used, date of start and finish, surface elevations, description of soil and thickness of each layer, depth to loss or gain of drilling fluid, hydraulic pressure required or number of blows per foot (N value) and, where applicable, depth to wet cave-in, depth to artisan head, groundwater elevation and time when water reading was made (repeat observation after 24 hours) and presence of gases. Note the location of strata containing organic materials, wet materials or other inconsistencies that might affect Engineering conclusions.
- g. Describe the existing surface conditions and summarize the subsurface conditions.
- h. Provide a profile and/or topographic map of rock or other bearing stratum.

i. Analyze the probable variations in elevation and movements of subsurface water due to seasonal influences.

j. Report all laboratory determinations of soil properties.

4. FOUNDATION ENGINEERING EVALUATION & RECOMMENDATIONS:

The CONSULTANT shall analyze the information developed by investigation or otherwise available to the CONSULTANT, including those aspects of the subsurface conditions which may affect design and construction of proposed structures, and shall consult with the Architect on the design and engineering requirements of the PROJECT. Based on such analysis and consultation, the CONSULTANT shall submit a professional evaluation and recommendations for the necessary areas of consideration, including but not limited to the following:

a. Foundation support of the structure and slabs, including soil bearing pressures, bearing elevations, foundation design recommendations and anticipated settlement.

b. Anticipation of, and management of, groundwater for design of structures and pavements.

c. Lateral earth pressures for design of walls below grade, including backfill, compaction and subdrainage, and their requirements.

d. Soil material and compaction requirements for site fill, construction backfill, and for the support of structures and pavements.

e. Pavement design.

f. Design criteria for temporary excavation and temporary protection such as excavation sheeting, underpinning and temporary dewatering systems.

g. Stability of slopes.

h. Seismic activity.

i. Frost penetration depth and effect.

j. Analysis of the effect of weather and/or construction equipment on soil during construction.

k. Analysis of soils to ascertain presence of potentially expansive, deleterious, chemically active or corrosive materials or conditions, or presence of gas.

l. Evaluation of depth of material requiring rock excavation methods for removal.

5. CONSTRUCTION SERVICES:

a. The CONSULTANT shall have access to the PROJECT site at all times.

b. The CONSULTANT will endeavor to secure compliance by Contractor with the contract requirements, but does not guarantee the performance of the contractor(s) contracts.

c. The CONSULTANT, as part of its basic services, shall advise the DISTRICT of any observed deficiencies in construction of the PROJECT.

d. The CONSULTANT shall not issue orders to Contractor that might commit the DISTRICT to extra expenses without first obtaining the written approval of the DISTRICT.

e. The CONSULTANT shall provide written evaluation of the performance of the Contractor under the requirements of the Construction Documents, if requested by the DISTRICT.

f. The CONSULTANT shall be responsible for assisting the DISTRICT in gathering information and processing forms required by applicable governing authorities, such as building departments, and DSA, in a timely manner and assist with the proper PROJECT close-out, if necessary.

g. If work requested by the Architect pursuant to this Article involves additional charge, prior written approval of the DISTRICT shall be obtained before proceeding.

h. CONSULTANT shall file all Interim Verified Reports, a Verified Report and any other documents that are necessary for the PROJECT's timely inspection and close-out as required by the applicable governmental agencies and/or authorities having jurisdiction over the PROJECT including, but not limited to, the Division of the State Architect ("DSA"). The CONSULTANT shall observe the construction of the PROJECT during the course of construction, at no additional cost to the DISTRICT, to maintain such personal contact with the PROJECT as is necessary to assure the CONSULTANT that the Contractor's Work is being completed, in every material respect, in compliance with the DSA approved Construction Documents.

i. The CONSULTANT shall meet with the Architect, Project Inspector, DISTRICT, Contractor, Laboratory of Record and Special Inspectors as needed throughout the completion of the PROJECT to verify, acknowledge and coordinate

the testing and special inspection program required by the DSA approved Construction Documents.

j. The CONSULTANT shall prepare Interim Verified Reports (Form DSA 293) and submit such Interim Verified Reports to the DSA, the Project Inspector and the DISTRICT prior to the Project Inspector's approval and sign off of any of the following sections of the Project Inspection Cards issued by the DSA as applicable:

- (1) Initial Site Work and Foundations Preparation;
- (2) Vertical and Horizontal Framing;
- (3) Appurtenances;
- (4) Finish Site Work and Other Work;
- (5) Final.

k. Upon the substantial completion of the PROJECT, the CONSULTANT shall prepare and submit to the DSA, Project Inspector and the DISTRICT a written Verified Report, on Form DSA 293, pursuant to Title 24 of the California Code of Regulations. The CONSULTANT shall also submit a signed Verified Report to the DSA, Project Inspector and the DISTRICT upon any of the following events:

- (1) Work on the PROJECT is suspended for a period of more than one month;
- (2) The services of the CONSULTANT are terminated for any reason prior to the completion of the PROJECT; or
- (3) The DSA requests a Verified Report.

6. GENERAL REQUIREMENTS:

a. The CONSULTANT's services shall be performed in a manner which is consistent with professional skill and care and the orderly progress of the work. The CONSULTANT represents that the CONSULTANT will follow the standards of CONSULTANT's profession in performing all services under this AGREEMENT.

b. All work shall be performed by qualified personnel under the supervision of a Registered Professional Engineer. All reports shall bear the seal of a Registered Professional Engineer.

c. The CONSULTANT shall make a written record of all meetings, conferences, discussions and decisions made between or among the CONSULTANT and any other party related to the PROJECT, including the DISTRICT, Architect or Contractor, during all phases of the PROJECT and concerning any material condition in the requirements, scope, performance and/or

sequence of the work. The CONSULTANT shall provide a copy of such record to the DISTRICT.

d. PROTECTION OF PROPERTY: The CONSULTANT shall contact the DISTRICT and all utility companies in order to obtain information regarding buried utilities and structures and shall take all reasonable precautions to prevent damage to property when CONSULTANT is performing its services under this AGREEMENT. The CONSULTANT shall reasonably restore the site to the condition existing prior to the CONSULTANT's entry, which restoration shall include, but not be limited to, backfilling of borings, patching of slabs and pavements, and repair of lawns and plantings. Each boring should be plugged temporarily, pending any additional groundwater readings. At the completion of any groundwater readings, the borings shall be permanently plugged, including patching of slabs and pavements.

e. REPORTS AND LOGS: Deliver one copy of Geotechnical Report(s) and logs to the DISTRICT. It is understood that the DISTRICT, or the Architect on the DISTRICT's behalf, may make and distribute copies of the reports and boring logs as necessary in connection with the proposed PROJECT without incurring obligation for additional compensation.

f. DISPOSITION OF SAMPLES: After all laboratory tests have been completed, samples shall be retained at the CONSULTANT's office, and remain open to inspection (until the end of recording of a notice of completion at which time the DISTRICT shall be contacted as to disposition of samples).

g. During the term of this AGREEMENT, the CONSULTANT shall coordinate its services with the DISTRICT, Architect, Project Inspector, Contractor, and any other parties necessary to ensure that the requirements applicable to the CONSULTANT related to the DSA's Project Inspection Card (Form 152) procedure and any subsequent revisions or updates thereto issued or required by the DSA, or any other/alternate processes are being met in compliance with the DSA's requirements. The CONSULTANT shall take all action necessary as to not delay progress in meeting any of the DSA's requirements. The CONSULTANT shall meet any applicable requirements set forth in the DSA's Construction Oversight Process Procedure (PR 13-01) and any subsequent revisions or updates thereto issued or required by the DSA. Any references to the DSA requirements, DSA forms, documents, manuals applicable to the PROJECT shall be deemed to include and incorporate any revisions or updates thereto.

h. If applicable, the CONSULTANT and any subcontractors (of any tier) performing work pursuant to this AGREEMENT must comply with the Labor Code sections 1725.5 and 1771.1 and must be properly and currently registered with DIR and qualified to perform public works pursuant to Labor Code section 1725.5 throughout the duration of this AGREEMENT. CONSULTANT shall be solely responsible for ensuring compliance with Labor Code section 1725.5 as well as any requirements implemented by DIR applicable to its services or its subcontractors



throughout the term of this AGREEMENT and in no event shall CONSULTANT be granted increased payment from the DISTRICT a result of CONSULTANT's efforts to maintain compliance with the Labor Code or any requirements implemented by the DIR. Failure to comply with these requirements shall be deemed a material breach of this AGREEMENT and grounds for termination for cause. If applicable, the CONSULTANT and all subcontractors shall furnish certified payroll records as required pursuant Labor Code section 1776 directly to the Labor Commissioner in accordance with Labor Code section 1771.4 on at least on a monthly basis (or more frequently if required by the DISTRICT or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE).

### **ARTICLE III**

#### **TERMINATION**

1. This AGREEMENT may be terminated by either PARTY upon fourteen (14) days written notice to the other PARTY in the event of a substantial failure of performance by such other PARTY, including insolvency of CONSULTANT; or if the DISTRICT should decide to abandon or indefinitely postpone the PROJECT.

2. In the event of a termination based upon abandonment or postponement by DISTRICT, the DISTRICT shall pay to the CONSULTANT for all services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement plus any sums due the CONSULTANT for Board approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this AGREEMENT, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings and other documents whether delivered to the DISTRICT or in the possession of the CONSULTANT. In the event termination is for a substantial failure of performance, all damages and costs associated with the termination, including increased consultant and replacement engineer costs shall be deducted from payments to the CONSULTANT.

3. In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience in accordance with Article III, Section 4 below, and CONSULTANT shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by CONSULTANT.

4. This AGREEMENT may be terminated without cause by DISTRICT upon fourteen (14) days written notice to the CONSULTANT. In the event of a termination without cause, the DISTRICT shall pay to the CONSULTANT for all services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records, and

expense reports up until the date of notice of termination plus any sums due the CONSULTANT for Board approved extra services.

5. In the event of a dispute between the PARTIES as to performance of the work or the interpretation of this AGREEMENT, or payment or nonpayment for work performed or not performed, the PARTIES shall attempt to resolve the dispute. Pending resolution of this dispute, CONSULTANT agrees to continue the work diligently to completion. If the dispute is not resolved, CONSULTANT agrees it will neither rescind the AGREEMENT nor stop the progress of the work, but CONSULTANT's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the PROJECT has been completed, and not before. The PARTIES may agree in writing to submit any dispute between the PARTIES to arbitration.

6. The PARTIES understand and agree that Article III of this AGREEMENT shall govern all termination rights and procedures between the PARTIES. Any termination provision that is attached to this AGREEMENT as an Exhibit shall be void and unenforceable between the PARTIES.

#### **ARTICLE IV**

##### **PLANS, DRAWINGS, REPORTS AND/OR OTHER DOCUMENTS**

1. The reports and/or other documents (regardless of format or medium) that are prepared, reproduced, maintained and/or managed by the CONSULTANT or CONSULTANT's consultants in accordance with this AGREEMENT, shall be and remain the property of the DISTRICT (hereinafter "PROPERTY"). The DISTRICT may provide the CONSULTANT with a written request for the return of its PROPERTY at any time. Upon CONSULTANT's receipt of the DISTRICT's written request, CONSULTANT shall return the requested PROPERTY to the DISTRICT. CONSULTANT may retain a confidential file copy of the PROPERTY with all originals being returned to the DISTRICT. Failure to provide the PROPERTY to the DISTRICT within ten (10) calendar days after the CONSULTANT's receipt of the DISTRICT's written request shall be deemed a material breach of this AGREEMENT.

#### **ARTICLE V**

##### **ACCOUNTING RECORDS OF THE CONSULTANT**

1. Records of the CONSULTANT's direct personnel and reimbursable expenses pertaining to any extra services provided by the CONSULTANT, which are in addition to those services already required by this AGREEMENT, and any records of accounts between the DISTRICT and CONSULTANT shall be kept on a generally recognized accounting basis and shall be available to the DISTRICT or DISTRICT's authorized representative at mutually convenient times.

## ARTICLE VI

### COMPENSATION TO THE CONSULTANT

1. The DISTRICT shall compensate the CONSULTANT as follows:

a. The DISTRICT agrees to pay the CONSULTANT in accordance with the rate and price schedule information set forth in EXHIBIT "A" for performing the basic services set forth in Article I, Article II and EXHIBIT "A" of this AGREEMENT. In no event shall the total payment to CONSULTANT exceed [REDACTED] DOLLARS (\$ [REDACTED]) for performing the basic services set forth Article I, Article II and EXHIBIT "A" of this AGREEMENT. Payment under this section includes the cost of the geotechnical observation, engineering and testing services necessary for the PROJECT including the furnishing of all materials, apparatus, labor and any required insurance for exploration procedures, sampling, field and laboratory testing, preparing and submitting boring logs and reports and other geotechnical services as set forth in EXHIBIT "A".

b. The CONSULTANT shall invoice all fees and/or costs monthly for the basic services that are provided in accordance with this AGREEMENT from the time the CONSULTANT begins work on the PROJECT. The CONSULTANT shall submit one (1) invoice monthly to the DISTRICT detailing all the fees associated with the applicable progress or services performed, reimbursable expenses (if any), and Additional Services (if any) incurred for the monthly billing period. Invoices requesting reimbursement for expenses incurred during the billing period must clearly list items for which reimbursement is being requested and be accompanied by proper documentation (e.g., receipts, invoices), including a copy of the DISTRICT's authorization notice for the invoiced item(s), if applicable. Invoices requesting payment for Additional Services must reflect the negotiated compensation previously approved by the DISTRICT and include a copy of the DISTRICT's written authorization notice approving the Additional Services and the additional compensation approved by the DISTRICT. No payments will be made by the DISTRICT to the CONSULTANT for monthly invoices requesting reimbursable expenses or Additional Services absent the prior written authorization of the DISTRICT. The DISTRICT's prior written authorization is an express condition precedent to any payment by the DISTRICT for Additional Services or reimbursable expenses and no claim by the CONSULTANT for additional compensation related to Additional Services or reimbursable expenses shall be valid absent such prior written approval by the DISTRICT.

c. The DISTRICT shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges thereon.

## ARTICLE VII

### ADDITIONAL CONSULTANT SERVICES

1. The CONSULTANT shall notify the DISTRICT in writing of the need for additional services required due to circumstances beyond the CONSULTANT's control

("Additional Services"). The CONSULTANT shall obtain written authorization from the DISTRICT before rendering Additional Services. Compensation for all valid Additional Services shall be negotiated and approved in writing by the DISTRICT before such Additional Services are performed by the CONSULTANT. No compensation shall be paid to the CONSULTANT for any Additional Services that are not previously approved by the DISTRICT in writing. Additional services shall include

- a. Making material revisions in reports or other documents when such revisions are required by the enactment or revision of laws, rules or regulations subsequent to the preparation and completion of such documents.
- b. Preparing reports and other documentation and supporting data, and providing other services in connection with project modifications required by causes beyond the control of the CONSULTANT which are not the result of the direct or indirect negligence, errors or omissions on the part of CONSULTANT.
- c. If the DISTRICT requests additional shifts to complete the services articulated in Articles I and II where the requests for additional shifts do not arise from the direct or indirect negligence, errors or omissions on the part of CONSULTANT. The CONSULTANT's compensation is expressly conditioned on the lack of fault of the CONSULTANT.
- d. Providing any other services not otherwise included in this AGREEMENT or not customarily furnished in accordance with the generally accepted practice in the CONSULTANT's industry.

## **ARTICLE VIII**

### **REIMBURSABLE EXPENSES**

1. Reimbursable expenses are in addition to compensation for basic and extra services, and shall be paid to the CONSULTANT at one and one-tenth (1.1) times the expenses incurred by the CONSULTANT, the CONSULTANT's employees and consultants for the following specified items unless otherwise approved by the DISTRICT in writing:

- a. Approved reproduction of plans, drawings, specifications, reports and/or other documents.
- b. Fees advanced for securing approval of authorities in connection with the services rendered pursuant to this AGREEMENT.

2. Reimbursable expenses are estimated to be [REDACTED] DOLLARS (\$ [REDACTED]), and this amount shall not be exceeded without the prior written approval of the DISTRICT.

## ARTICLE IX

### MISCELLANEOUS

1. To the fullest extent permitted by law, CONSULTANT agrees to indemnify, and hold DISTRICT entirely harmless from all liability arising out of:

a. Workers Compensation and Employers Liability: Any and all claims under Workers' Compensation acts and other employee benefit acts with respect to CONSULTANT's employees or CONSULTANT's subcontractor's employees arising out of CONSULTANT's work under this AGREEMENT, except for liability resulting from the sole or active negligence, or willful misconduct of the DISTRICT, its officers, employees, agents or independent consultants who are directly employed by the DISTRICT; and

b. General Liability: To the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CONSULTANT, the CONSULTANT shall indemnify, defend and hold the DISTRICT harmless from any liability for damages for (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of law; or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by the CONSULTANT or the DISTRICT, or any person, firm or corporation employed by the CONSULTANT or the DISTRICT upon or in connection with the PROJECT, except for liability resulting from the sole or active negligence, or willful misconduct of the DISTRICT, its officers, employees, agents, or independent consultants who are directly employed by the DISTRICT. The CONSULTANT, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings (other than professional negligence covered by Section c below) that may be brought or instituted against the DISTRICT, its officers, agents, or employees, to the extent such claims, actions, suits, or other proceedings arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT, and shall pay or satisfy any judgment that may be rendered against the DISTRICT, its officers, agents, or employees, in any action, suit or other proceedings as a result thereof. Any costs to defend under this Section b shall not exceed the CONSULTANT's proportionate percentage of fault; and

c. Professional Liability: To the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CONSULTANT, the CONSULTANT shall indemnify and hold the DISTRICT harmless from any loss, injury to, death of persons, or damage to property caused by any act, neglect, default, or omission of the CONSULTANT, or any person, firm, or corporation employed by the CONSULTANT, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm, or corporation, including the DISTRICT, arising out of, or in any way connected with, the PROJECT, including injury or damage either on or off DISTRICT property; but not for any loss, injury, death, or damages caused by sole or active negligence, or willful misconduct of the DISTRICT. With regard to the CONSULTANT's obligation to indemnify for acts of professional negligence, such obligation does not include the obligation to provide defense counsel or to pay for the

defense of actions or proceedings brought against the DISTRICT, but rather to reimburse the DISTRICT for attorneys' fees and costs incurred by the DISTRICT in defending such actions or proceedings brought against the DISTRICT, and such fees and costs shall not exceed the CONSULTANT's proportionate percentage of fault.

d. The PARTIES understand and agree that Article IX, Section 1 of this AGREEMENT shall be the sole indemnity, as defined by California Civil Code § 2772, governing this AGREEMENT. Any other indemnity that may be attached to this AGREEMENT as an Exhibit shall be void and unenforceable between the PARTIES.

E. Any attempt to limit the CONSULTANT's liability to the DISTRICT in an attached exhibit shall be void and unenforceable between the DISTRICT and the CONSULTANT. In no event shall the CONSULTANT's liability be limited to the amount of the CONSULTANT's fees for the PROJECT or any other amount.

2. CONSULTANT shall purchase and maintain policies of insurance with an insurer or insurers, authorized to do business in the State of California and acceptable to DISTRICT which will protect CONSULTANT and DISTRICT from claims which may arise out of or result from CONSULTANT's actions or inactions relating to the AGREEMENT, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

a. The CONSULTANT shall carry Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California. However, such amount shall not be less than ONE MILLION DOLLARS (\$1,000,000).

b. Commercial general liability insurance with limits of not less than TWO MILLION DOLLARS (\$2,000,000) and automobile liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) for bodily injury and property damage liability, per occurrence, including coverage for the following:

1. Owned, non-owned and hired vehicles;
2. Blanket contractual;
3. Broad form property damage;
4. Products/completed operations; and
5. Personal injury.

c. Professional liability insurance, including contractual liability, with limits of \$1,000,000, per claim. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least five (5) years thereafter and/or at rates consistent with the time of execution of this AGREEMENT adjusted for inflation. In the event that CONSULTANT subcontracts any portion of CONSULTANT's duties, CONSULTANT shall require any such subcontractor to

purchase and maintain insurance coverage as provided in this subparagraph. Failure to maintain professional liability insurance is a material breach of this AGREEMENT and grounds for immediate termination.

d. Valuable Document Insurance. The CONSULTANT shall carry adequate insurance on all drawings, specifications and reports as may be required to protect the DISTRICT in the amount of its full equity in those drawings, specifications and reports, and shall file with the DISTRICT a certificate of that insurance. The cost of that insurance shall be paid by the CONSULTANT, and the DISTRICT shall be named as a loss payee.

e. Each policy of insurance required in Article IX, Section 2(b) above shall name DISTRICT and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of CONSULTANT hereunder, such policy is primary and any insurance carried by DISTRICT is excess and non-contributory with such primary insurance; shall state that not less than thirty (30) days' written notice shall be given to DISTRICT prior to cancellation; and, shall waive all rights of subrogation. CONSULTANT shall notify DISTRICT in the event of material change in, or failure to renew, each policy. Prior to commencing work, CONSULTANT shall deliver to DISTRICT certificates of insurance as evidence of compliance with the requirements herein. In the event CONSULTANT fails to secure or maintain any policy of insurance required hereby, DISTRICT may, at its sole discretion, secure such policy of insurance in the name of and for the account of CONSULTANT, and in such event CONSULTANT shall reimburse DISTRICT upon demand for the cost thereof.

f. In the event that CONSULTANT subcontracts any portion of CONSULTANT's duties, CONSULTANT shall require any such subcontractor to purchase and maintain insurance coverage for the types of insurance referenced in Article IX, Sections 2(a), (b), (c), and (d), in amounts which are appropriate with respect to that subcontractor's part of work which shall in no event be less than \$500,000 per occurrence.

3. CONSULTANT, in the performance of this AGREEMENT, shall be and act as an independent contractor. CONSULTANT understands and agrees that CONSULTANT and all of CONSULTANT's employees shall not be considered officers, employees or agents of the DISTRICT, and are not entitled to benefits of any kind or nature normally provided employees of the DISTRICT and/or to which DISTRICT's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONSULTANT assumes the full responsibility for the acts and/or omissions of CONSULTANT's employees or agents as they relate to the services to be provided under this AGREEMENT. CONSULTANT shall assume full responsibility for payment of any applicable prevailing wages and all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective CONSULTANT's employees. CONSULTANT shall fully defend and indemnify the DISTRICT from any claims, damages or any liability arising from or related to CONSULTANT or its subcontractors' failure to comply with any applicable prevailing wage laws and requirements.

4. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of any third party against either the DISTRICT or CONSULTANT.

5. The DISTRICT and CONSULTANT, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other PARTY to this AGREEMENT with respect to the terms of this AGREEMENT. CONSULTANT shall not assign this AGREEMENT.

6. This AGREEMENT shall be governed by the laws of the State of California.

7. This AGREEMENT shall not include or incorporate the terms of any general conditions, conditions, master agreement or any other boilerplate terms or form documents prepared by the CONSULTANT. The attachment of any such document to this AGREEMENT as Exhibit "A" shall not be interpreted or construed to incorporate such terms into this AGREEMENT unless the DISTRICT approves of such incorporation in a separate writing signed by the DISTRICT. Any reference to such boilerplate terms and conditions in the proposal or quote submitted by the CONSULTANT shall be null and void and have no effect upon this AGREEMENT. Proposals, quotes, statement of qualifications and other similar documents prepared by the CONSULTANT may be incorporated into this AGREEMENT as Exhibit "A" but such incorporation shall be strictly limited to those parts describing the CONSULTANT's scope of work, rate and price schedule and qualifications.

8. Each of the PARTIES have had the opportunity to, and have to the extent each deemed appropriate, obtained legal counsel concerning the content and meaning of this AGREEMENT. Each of the PARTIES agrees and represents that no promise, inducement or agreement not herein expressed has been made to effectuate this AGREEMENT. This AGREEMENT represents the entire AGREEMENT between the DISTRICT and CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be amended or modified only by an agreement in writing signed by both the DISTRICT and the CONSULTANT.

9. Time is of the essence with respect to all provisions of this AGREEMENT.

10. This AGREEMENT shall be construed as if all PARTIES hereto, and each of them, prepared it and any uncertainty or ambiguity shall not be interpreted to favor one PARTY over any other PARTY.

11. If either PARTY becomes involved in litigation arising out of this AGREEMENT or the performance thereof, each PARTY shall bear its own litigation costs and expenses, including reasonable attorney's fees.

12. All exhibits referenced herein and attached hereto shall be deemed incorporated into and made a part of this AGREEMENT by each reference as though fully set forth in each instance in the text hereof with the exception of those documents or provisions that are subject to the exclusions specifically set forth in this AGREEMENT.



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

CONSULTANT:



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

\_\_\_\_\_

DISTRICT:

Las Virgenes Unified School District

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

\_\_\_\_\_

**EXHIBIT “A”**

**(INSERT CONSULTANT PROPOSAL)**