

INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES
(Geotechnical and Other Services)
Laurel Lower Campus HVAC Electrification Project

BOARD APPROVED
MAY 07 2026
MENLO PARK CITY
SCHOOL DISTRICT

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the 7th day of May, 2026, by and between the Menlo Park City School District, ("District") and Ninyo & Moore Geotechnical & Environmental Science Consultants ("Consultant"), (each a "Party," and together, the "Parties").

WHEREAS, Government Code section 4526, authorizes the District to contract with and employ any person(s) for the furnishing of architecture, landscape architecture, environmental, engineering, land surveying, and construction project management services on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required;

WHEREAS, the District duly determined that it needs some or all of the Services (as hereinafter defined) to be provided pursuant to this Agreement; and

WHEREAS, the Consultant is specially trained, experienced, and competent to perform the Services (as hereinafter defined) required by the District, as needed on the basis set forth in this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** The Consultant shall provide laboratory of record and soil sampling services, as further described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services").
2. **Term.** The term of this Agreement shall be May 8, 2026, through August 31, 2026 ("Term"), unless this Agreement is earlier terminated and/or otherwise cancelled prior to that time. Consultant shall commence providing the Services and will diligently perform Services as required and complete performance thereof. The Term may be extended via an amendment, consistent with Section 28, but in no case shall exceed a total of one (1) calendar year in duration.
3. **Submittal of Documents.** The Consultant shall not commence the Services under this Agreement until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<u> X </u>	Signed Agreement
<u> X </u>	Workers' Compensation Certification
<u> X </u>	Prevailing Wage Certification
<u> X </u>	Fingerprinting/Criminal Background Investigation Certification
<u> X </u>	Insurance Certificates and Endorsements
<u> X </u>	W-9 Form (incorporated onto signature page)

4. **Compensation.** District agrees to pay the Consultant compensation for Services satisfactorily rendered, it being agreed that the total fee under this Agreement is not to exceed **Twenty-Five Thousand, Nine Hundred Ninety-Nine Dollars and 50/100 Cents (\$25,999.50).**

For the Services, District shall pay Consultant according to the following terms and conditions:

- 4.1. Payment for the Services shall be made for all undisputed amounts based upon the delivery of the work product as determined by the District. Payment shall be made

within thirty (30) days after the Consultant submits an invoice to the District for Services actually rendered and after the District's written approval of the Services, or the portion of the Services for which payment is to be made.

- 4.2. Where certain Services may be performed at the hourly billing rates and/or unit prices included in **Exhibit "B,"** the itemized invoice shall reflect the hours spent by the Consultant in performing its Services pursuant to this Agreement.
- 4.3. If Consultant works at more than one site, Consultant shall invoice for each site separately.
- 4.4. Where specific fees are applicable to certain Services, such fees shall be included in **Exhibit "B"** hereto.
5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing the Services, except as follows:
 - 5.1. Services-related expenses approved in advance by District.
6. **Independent Contractor.** Consultant represents and warrants that Consultant is an independent contractor or business entity that is: (i) free from the control and direction of the District in connection with the performance of the Services, (ii) performing Services that are outside the usual course of the District's business, and (iii) customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Services performed, District being interested only in the results obtained. Consultant, in the performance of the Services under this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees.
7. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the Services.
8. **Performance of Services.**
 - 8.1. **Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. The Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for such services to California school districts. Consultant shall carefully study and compare all documents, findings, and other instructions and shall at once report to District, in writing, any error, inconsistency, or omission that Consultant or its employees may discover. Consultant shall have responsibility for discovery of errors, inconsistencies, or omissions.
 - 8.2. **Meetings.** Consultant and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of the Services, and any other issues deemed relevant to the operation of Consultant's performance of Services.

- 8.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
- 8.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.
9. **Originality of Services.** Except as to standard generic details, Consultant 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 Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for the Services.
10. **Ownership of Data.** Pursuant to Education Code section 17316, this Agreement creates a non-exclusive and perpetual license for the District to use, at its discretion, all plans including, but not limited to, record drawings, specifications, estimates and other documents that Consultant prepared or caused to be prepared pursuant to this Agreement. Consultant retains all rights to all copyrights over designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that Consultant prepares or causes to be prepared pursuant to this Agreement. In the event the District changes or uses any fully or partially completed documents without Consultant's knowledge or participation or both, the District agrees to release Consultant of responsibility for such changes, and shall hold Consultant harmless from and against any and all claims on account of any damages or losses to property or persons, or economic losses, arising out of that change or use, unless Consultant is found to be liable in a forum of competent jurisdiction. In the event that the District uses any fully or partially completed documents without the Consultant's full involvement, the District shall remove all title blocks and other information that might identify Consultant.
11. **Copyright/Trademark/Patent.** Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant agrees to take such actions as are necessary to protect the rights assigned to the District in this Agreement, and to refrain from taking any action that would impair those rights. Consultant's responsibilities under this Agreement include without limitation, placing proper notice of copyright on all versions of the plans and specifications. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
12. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.

13. **Termination.**

- 13.1. **For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement for its own convenience and compensate Consultant only for those Services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of the Services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three (3) days after the day of mailing, whichever is sooner.
- 13.2. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
- 13.2.1. material violation of this Agreement by the Consultant; or
 - 13.2.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or
 - 13.2.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

Written notice by District shall contain the reasons for such intention to terminate, and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required Services from another consultant. If the expense, fees, and/or costs to the District exceed the cost of providing the Services pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

- 13.3. Upon termination, Consultant shall provide the District with all documents produced, maintained or collected by Consultant pursuant to this Agreement, whether or not such documents are final or draft documents.

14. **Indemnification.** To the furthest extent permitted by California law, Consultant shall indemnify and hold harmless the District, its Board of Education ("Board"), agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Consultant ("Claim"). Consultant shall, to the furthest extent permitted by California law, defend the Indemnified Parties at Consultant's own expense, including attorneys' fees and costs, from any and all Claim(s) and allegations relating thereto with counsel approved by District where such approval is not to be unreasonably withheld. Whereas the cost to defend the Indemnified Parties charged to the Consultant shall not exceed the proportionate percentage of Consultant's fault as determined by a court of competent jurisdiction, any amounts paid in excess of such established fault will be reimbursed by the District. Notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the design professional shall meet and confer with other parties regarding unpaid defense costs. The District shall have the right to accept or reject any legal representation that Consultant proposes to defend the indemnified parties.

- 14.1. Consultant shall pay and satisfy any judgment, award, or decree that may be rendered against the Indemnified Parties in any Claim, subject to the Section above. Consultant's obligation pursuant to this Section includes reimbursing the District for the

cost of any settlement paid by the Indemnified Parties and for any and all fees and costs, including but not limited to legal fees and costs, expert witness fees, and consultant fees, incurred by the Indemnified Parties in the defense of any Claim(s) and to enforce the indemnity herein, subject to the Section above. Consultant's obligation to indemnify shall not be restricted to insurance proceeds.

- 14.2. District may withhold any and all costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant from amounts owing to Consultant.

15. Insurance.

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

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

15.1.1. Commercial General Liability and Automobile Liability Insurance.

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

- 15.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers' compensation coverage for its employees. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of District for all work performed by Consultant, its employees, agents and subcontractors. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

- 15.1.3. **Professional Liability (Errors and Omissions).** Professional Liability Insurance as appropriate to the Consultant's profession, coverage to continue through completion of construction plus two (2) years thereafter.

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

15.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

15.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

15.2.3. An endorsement stating that the District and its Board, agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District. An endorsement shall also state that there shall be a waiver of any subrogation.

15.2.4. All policies except the Professional Liability, Workers' Compensation Insurance, and Employers' Liability Insurance Policies shall be written on an occurrence form.

15.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

15.4. If Consultant normally carries insurance in an amount greater than the minimum amounts required herein, that greater amount shall become the minimum required amount of insurance for purposes of the Agreement. Therefore, Consultant hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Agreement.

15.5. Insurance written on a "claims made" basis shall be retroactive to a date that coincides with or precedes Consultant's commencement of the Services, including subsequent policies purchased as renewals or replacements.

16. **Assignment.** The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant. Any such assignment shall be null and void.

17. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If Consultant observes that any of the Services required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant performs any Services that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.

17.1. **Labor Code Requirements:** Where required, Consultant shall comply with all applicable provisions of the California Labor Code, Division 2, Part 7, Chapter 1, Articles 1 – 5, including, without limitation, the payment of the general prevailing per diem wage rates for “public works” and “maintenance” projects of more than one thousand dollars (\$1,000) (“Prevailing Wage Laws”). Copies of the prevailing rate of per diem wages are on file with the District. Since Consultant is performing a public works or maintenance project for more than one thousand dollars (\$1,000) in compensation, Consultant hereby agrees to fully comply with and to require its consultant(s), subcontractor(s), and any other affiliates who are performing any part of the Services to fully comply with all requirements of the Prevailing Wage Laws.

17.1.1. **Registration:** If applicable, before a public works contract can be awarded, Consultant and its subcontractor(s) shall be registered with the Department of Industrial Relations in accordance with Labor Code section 1771.1. At least one week before commencing work, Consultant shall provide to District the name and DIR registration number for Consultant and any applicable subcontractor.

17.1.2. **Certified Payroll Records:** Consultant and its subcontractor(s) shall keep accurate certified payroll records of workers and shall electronically submit certified payroll records directly to the Department of Industrial Relations weekly or within ten (10) days of any request by the District or the Department of Industrial Relations, consistent with Labor Code section 1776.

17.1.3. **Labor Compliance:** Consultant shall perform the Services while complying with all the applicable regulations, including section 16000, et seq., of Title 8 of the California Code of Regulations and is subject to labor compliance monitoring and enforcement by the Department of Industrial Relations.

18. **Certificates/Permits/Licenses/Registration.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this Agreement, including, without limitation, pursuant to Education Code section 17302.

19. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which the Services are actually being performed.

20. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, mental disability, reproductive health decision making, medical condition, genetic information, marital status, sex, gender identity, gender expression, age, sexual orientation, gender, veteran or military status, or age and therefore the Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, the Consultant agrees to require like compliance by all of its subcontractor(s).

21. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing of any portion of the Services. Consultant expressly acknowledges that the following conditions shall apply to any work performed by Consultant and/or Consultant's employees on a school site:

- 21.1. All site visits shall be arranged through the District;
- 21.2. Consultant and Consultant's employees shall inform District of their proposed activities and location at the school site, allowing District time to arrange site visits without a disruption to the educational process;
- 21.3. Consultant and/or Consultant's employees shall check in with the school office each day immediately upon arriving at the school site;
- 21.4. Once at such location, Consultant and Consultant's employees shall not change locations without contacting the District;
- 21.5. Consultant and Consultant's employees shall not use student restroom facilities; and
- 21.6. If Consultant and Consultant's employees find themselves alone with a student, Consultant and Consultant's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

22. [RESERVED]

- 23. 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.

- 24. District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:

- 24.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
- 24.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).

- 25. Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services.

- 26. Confidentiality.** The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

- 27. Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, addressed as follows:

District:

Menlo Park City School District
181 Encinal Ave.
Atherton, CA 94027
ATTN: Sandra Franco, Director of
Maintenance, Operations & Transportation

Consultant:

**Ninyo & Moore Geotechnical and
Environmental Sciences Consultants**
95 Edge Road
Atherton, CA 94027
510.343.3001
ATTN: Francis Thummasit, Senior Project
Manager, and Lothus Hennefer, PE,
Construction Services Manager

Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

28. **Integration/Entire Agreement of Parties/Amendments.** 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.
29. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.
30. **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.
31. **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.
32. **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.
33. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
34. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
35. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
36. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

37. **Signature Authority/Effectiveness.** Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement. This Agreement, all amendments thereto and any other related document not otherwise previously authorized, shall only be effective upon consent or ratification by the Board.
38. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in one or more counterparts, and all counterparts together shall be construed as one document. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one Agreement, binding all Parties hereto.
39. **Disputes; Tolling.** 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, Consultant 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 Consultant 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 Consultant'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 Consultant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.
- 39.1. Consultant agrees to toll all statutes of limitations for District's assertion of Claims against Consultant that arise out of, pertain to, or relate to contractors' or subcontractors' Claims against District involving the Services, until the contractors' or subcontractors' Claims are finally resolved.
40. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

[Signature page follows.]

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

Dated: May 8, 2026

Menlo Park City School District

By: 

Print Name: Kristen Gracia

Print Title: Superintendent

Dated: May 8, 2026

May 15
Dated: _____, 2026

Ninyo & Moore Geotechnical and Environmental Sciences Consultants

By: 

Print Name: Ransom Hennefer

Print Title: Principal Engineer

Information regarding Consultant:

License No.: 697063

Registration No.: 1000004481

Address: 5710 RUFFIN ROAD
SAN DIEGO CA 92123

Telephone: 408.435.9000 (x15304)

Facsimile: N/A

E-Mail: ransom.hennefer@socotec.us

Type of Business Entity:

☐ Individual
☐ Sole Proprietorship
☐ Partnership
☐ Limited Partnership CA
☒ Corporation, State: _____
☐ Limited Liability Company
☐ Other: _____

33-0269828

Employer Identification and/or
Social Security Number

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

EXHIBIT "A"
DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT

Consultant's entire proposal, dated as of April 15, 2026 ("Proposal"), is **not** made part of this Agreement.

Consultant agrees to provide laboratory of record and soil sampling services. The Services may include the following, which are excerpts from the Proposal:

PROPOSED SCOPE OF WORK

Based on our understanding of the proposed construction and our experience with similar projects, we propose to provide the following scope of services:

Reinforced Concrete

- Review concrete mix designs submitted by the contractor for compliance with the project documents.
- Reinforcing steel sampling and tagging at the shop.
- Laboratory tensile and bend testing of reinforcing steel.
- Concrete placement inspection including slump and temperature tests of concrete and cast compressive strength test specimens (1 set / 50 cubic yards) on site.
- Concrete sample pick-up and transportation to our laboratory for curing and testing.
- Compression testing of concrete cylinders in the laboratory.

Post Installed Anchors

- Visual inspection during the installation of post installed anchors.
- Load testing including pull and torque testing of post-installed anchors.

Soil Sampling

We understand that this project will generate soil that will require profiling for disposal at an appropriate facility. Based on information provided, the total quantity of soil that will require profiling is approximately 10 cubic yards. To obtain representative soil samples, our scope of work will include collecting four discrete samples from a soil stockpile or from locations to be excavated by the site contractor. The four discrete samples will be composited into one 4-point composite sample for laboratory analysis. The proposed sampling scope is based on typical landfill requirements that specify collection of one 4-point composite sample for every 250 cubic yards of soil.

Samples will be collected in laboratory-supplied glass jars and will be placed in a cooler with ice for delivery under chain-of-custody to a State of California-certified environmental laboratory.

The samples will be analyzed on a dry-weight basis for the following on a 5-day turnaround:

- Total Petroleum Hydrocarbons as Diesel (TPHd) and as Motor Oil (TPHmo) by United States Environmental Protection Agency (EPA) Method 8015B
- CAM 17 Metals by EPA Method 6010/7471
- TPH as Gasoline (TPHg) and Volatile Organic Compounds by EPA Method 8260B
- Semi-Volatile Organic Compounds by EPA Method 8270C
- Organochlorine Pesticides and Polychlorinated Biphenyls by EPA Method 8081A/8082
- Asbestos by Polarized Light Microscopy CARB 435A
- Title 22 Soluble Threshold Limit Concentration (STLC), waste extraction test (WET) and Toxicity Characteristic Leaching Procedure (TCLP) analysis, if needed for solubility as required (up to 2 analyses). The need for these analyses will be based on initial sample results, and additional turn-around time of approximately 7-days past the initial 5-day turn-around will be required if these analyses are run.

Subsequent to receipt of all laboratory analytical data, Ninyo & Moore will prepare a brief email summarizing sample analytical results and comparing the results to applicable screening levels.

Project Management

- Provide project management to include client liaison, work scheduling, quality review, and distribution of test data and daily field inspection reports.

- Prepare daily field reports documenting items inspected and reports of laboratory testing to be submitted to the project team via DSA box.
- Prepare interim and final verified report (DSA 291) at the conclusion of the project.

Other Services

Consultant may provide other laboratory of record and soil sampling services, subject to prior approval by the District.

EXHIBIT "B"
FEE SCHEDULE AND HOURLY RATE SCHEDULE

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

The following is an excerpt from Consultant's Proposal:

Table 1 - Breakdown of Estimated Fee - Graham Middle School Site Improvements						
Reinforced Concrete						
Senior Technician	Reinforcing Steel Sampling and Tagging	8 hours	@	\$ 115.00 /hour	\$	920.00
Senior Technician	Concrete Sampling & Testing (Slump & Temperature) and Sample Pick Up	30 hours	@	\$ 115.00 /hour	\$	3,450.00
Laboratory Testing	Tensile and Bend Test of Reinforcing Steel	4 tests	@	\$ 75.00 /test	\$	300.00
Laboratory Testing	Compression Tests of 5 Concrete Cylinders / 50 Cubic Yards (4"x 8" Cylinders)	20 tests	@	\$ 35.00 /test	\$	700.00
Subtotal					\$	5,370.00
Post-Installed Anchors						
Special Inspector	Post-Installed Anchors Installation Inspection	40 hours	@	\$ 115.00 /hour	\$	4,600.00
Special Inspector	Load Testing of Post-Installed Anchors (Torque & Pull Testing)	40 hours	@	\$ 115.00 /hour	\$	4,600.00
Subtotal					\$	\$9,200.00
Other Charges						
Equipment		118 hours	@	\$ 15.00 /hour	\$	1,770.00
Vehicle		118 hours	@	\$ 15.00 /hour	\$	1,770.00
Subtotal					\$	3,540.00
Project Management						
Geo/Project Assistant	Dispatch	6 hours	@	\$ 100.00 /hour	\$	600.00
Senior Project Engineer/Manager	Meetings, Mtx Design, WPS Review, Project Coordination and Progress Reports	12 hours	@	\$ 200.00 /hour	\$	2,400.00
Principal Engineer	Project Oversight, Consultation and Verified Report Preparation (DSA 291)	4 hours	@	\$ 220.00 /hour	\$	880.00
Subtotal					\$	3,880.00
TOTAL ESTIMATED FEE						\$21,990.00

Table 2 - Breakdown of Estimated Fee - Soil Sampling**Project Coordination & Management**

Principal Engineer/Geologist/Environmental Scientist	1 hour	@ \$ 220.00 /hour	\$ 220.00
Senior Staff Engineer/Geologist/Environmental Scientist	1 hour	@ \$ 180.00 /hour	\$ 180.00
		Subtotal	\$ 400.00

Soil Sampling

Senior Staff Engineer/Geologist/Environmental Scientist	4 hours	@ \$ 180.00 /hour	\$ 720.00
Field Vehicle and Equipment Usage	4 hours	@ \$ 15.00 /hour	\$ 60.00
Supplies		Lump Sum	
		Subtotal	\$ 780.00

Laboratory Analyses

CAM 17 Metals by 200.7/6010B/7470/7471	1 test	@ \$ 160.00 /test	\$ 184.00
TPHg/VOCs using EPA Method 8260B	1 test	@ \$ 170.00 /test	\$ 195.50
Multi-Range TPH using EPA Method 8015b	1 test	@ \$ 80.00 /test	\$ 92.00
Organochlorine Pesticides & PCBs by EPA Method 8081A/8082	1 tests	@ \$ 170.00 /test	\$ 195.50
Semi-Volatile Organic Compounds by EPA Method 8270C	1 tests	@ \$ 240.00 /test	\$ 276.00
Asbestos by PLM 435A	1 tests	@ \$ 225.00 /test	\$ 258.75
STLC and TCLP	2 tests	@ \$ 155.00 /test	\$ 356.50
Reporting on a Dry Weight basis	1 samples	@ \$ 50.00 /sample	\$ 57.50
Composite Fee	4 samples	@ \$ 50.00 /sample	\$ 230.00
EDD and Waste Disposal Fees	1 set	@ \$ 125.00 /set	\$ 143.75
		Subtotal	\$ 1,989.50

Data Evaluation and Summary

Principal Engineer/Geologist/Environmental Scientist	2 hours	@ \$ 220.00 /hour	\$ 440.00
Senior Project Engineer/Geologist/Environmental Scientist	2 hours	@ \$ 200.00 /hour	\$ 400.00
		Subtotal	\$ 840.00

TOTAL ESTIMATED FEE**\$ 4,009.50**

Schedule of Fees

Hourly Charges for Personnel

Professional Staff

Principal Engineer/Geologist/Environmental Scientist/Certified Industrial Hygienist	\$ 220
Senior Engineer/Geologist/Environmental Scientist	\$ 210
Senior Project Engineer/Geologist/Environmental Scientist	\$ 200
Project Engineer/Geologist/Environmental Scientist	\$ 195
Senior Staff Engineer/Geologist/Environmental Scientist	\$ 180
Staff Engineer/Geologist/Environmental Scientist	\$ 165
GIS Analyst	\$ 145
Technical Illustrator/CAD Operator	\$ 120

Field Staff

Certified Asbestos/Lead Technician	\$ 200
Field Operations Manager	\$ 130
Nondestructive Examination Technician (UT, MT, LP)	\$ 125
Supervisory Technician	\$ 120
Special Inspector (Concrete, Masonry, Structural Steel, Welding, and Fireproofing)	\$ 115
Senior Technician	\$ 115
Technician	\$ 110

Administrative Staff

Information Specialist	\$ 100
Geotechnical/Environmental/Laboratory Assistant	\$ 100
Data Processor	\$ 80

Other Charges

Concrete Coring Equipment (includes technician)	\$ 190/hr
Anchor Load Test Equipment (includes technician)	\$ 190/hr
GPR Equipment	\$ 180/hr
State of California Prevailing Wage Surcharge	\$ 30/hr
Inclinometer	\$ 100/hr
Hand Auger Equipment	\$ 80/hr
Rebar Locator (Pachometer)	\$ 25/hr
Vapor Emission Kit	\$ 65/kit
Equipment	\$ 15/hr
X-Ray Fluorescence	\$ 70/hr
PID/FID	\$ 25/hr
Air Sampling Pump	\$ 10/hr
Field Vehicle	\$ 15/hr
Expert Witness Testimony	\$ 450/hr
Direct Expenses	Cost plus 15 %
Special equipment charges will be provided upon request.	

Schedule of Fees for Laboratory Testing

SOILS

Atterberg Limits, D 4318, CT 204	\$ 190
California Bearing Ratio (CBR), D 1883	\$ 550
Chloride and Sulfate Content, CT 417 & CT 422	\$ 175
Consolidation, D 2435, CT 219	\$ 300
Consolidation, Hydro-Collapse only, D 2435	\$ 150
Consolidation - Time Rate, D 2435, CT 219	\$ 200
Direct Shear - Remolded, D 3080	\$ 350

Direct Shear - Undisturbed, D 3080	\$ 300
Durability Index, CT 229	\$ 175
Expansion Index, D 4829, IBC 18-3	\$ 190
Expansion Potential (Method A), D 4546	\$ 170
Geofabric Tensile and Elongation Test, D 4632	\$ 200
Hydraulic Conductivity, D 5084	\$ 350
Hydrometer Analysis, D 6913, CT 203	\$ 220
Moisture, Ash, & Organic Matter of Peat/Organic Soils	\$ 120
Moisture Only, D 2216, CT 226	\$ 45
Moisture and Density, D 2937	\$ 55
Permeability, CH, D 2434, CT 220	\$ 350
pH and Resistivity, CT 643	\$ 185
Proctor Density D1557, D 698, CT 216, AASHTO T-180	\$ 350
Proctor Density with Rock Correction D 1557	\$ 400
R-value, D 2944, CT 301	\$ 450
Sand Equivalent, D 2419, CT 217	\$ 155
Sieve Analysis, D 6913, CT 202	\$ 175
Sieve Analysis, 200 Wash, D 1140, CT 202	\$ 130
Specific Gravity, D 854	\$ 135
Thermal Resistivity (ASTM 5334, IEEE 442)	\$ 925
Triaxial Shear, C.U., D 4767, T 297	\$ 550
Triaxial Shear, C.U., w/pore pressure, D 4767, T 2297 per pt	\$ 450
Triaxial Shear, C.U., w/pore pressure, D 4767, T 2297 per pt	\$ 350
Triaxial Shear, U.U., D 2850	\$ 250
Unconfined Compression, D 2166, T 208	\$ 150

MASONRY

Brick Absorption, 24-hour submersion, 5-hr boiling, 7-day, C 67	\$ 70
Brick Compression Test, C 67	\$ 55
Brick Efflorescence, C 67	\$ 55
Brick Modulus of Rupture, C 67	\$ 50
Brick Moisture as received, C 67	\$ 45
Brick Saturation Coefficient, C 67	\$ 60
Concrete Block Compression Test, 8x8x16, C 140	\$ 70
Concrete Block Conformance Package, C 90	\$ 500
Concrete Block Linear Shrinkage, C 426	\$ 200
Concrete Block Unit Weight and Absorption, C 140	\$ 80
Cores, Compression or Shear Bond, CA Code	\$ 80
Masonry Grout, 3x3x6 prism compression, C 39	\$ 45
Masonry Mortar, 2x2 cylinder compression, C 109	\$ 55
Masonry Prism, half size, compression, C 1019	\$ 120
Masonry Prism, Full size, compression, C 1019	\$ 200

REINFORCING AND STRUCTURAL STEEL

Chemical Analysis, A 36, A 615	\$ 135
Fireproofing Density Test, UBC 7-6	\$ 90
Hardness Test, Rockwell, A 370	\$ 80
High Strength Bolt, Nut & Washer Conformance, per assembly, A 325	\$ 250
Mechanically Spliced Reinforcing Tensile Test, ACI	\$ 175
Pre-Stress Strand (7 wire), A 416	\$ 170
Reinforcing Tensile or Bend up to No. 11, A 615 & A 706	\$ 75
Structural Steel Tensile Test: Up to 200,000 lbs., A 370	\$ 90
Welded Reinforcing Tensile Test: Up to No. 11 bars, ACI	\$ 80

CONCRETE

Compression Tests, 6x12 Cylinder, C 39	\$ 35
Concrete Mix Design Review, Job Spec	\$ 350
Concrete Mix Design, per Trial Batch, 6 cylinder, ACI	\$ 950
Concrete Cores, Compression (excludes sampling), C 42	\$ 130
Drying Shrinkage, C 157	\$ 500
Flexural Test, C 78	\$ 95
Flexural Test, C 293	\$ 95

Flexural Test, CT 523	\$ 95
Gunite/Shotcrete, Panels, 3 cut cores per panel and test, ACI	\$ 360
Lightweight Concrete Fill, Compression, C 495	\$ 90
Petrographic Analysis, C 856	\$ 2,800
Restrained Expansion of Shrinkage Compensation	\$ 550
Splitting Tensile Strength, C 496	\$ 120
3x6 Grout, (CLSM), C 39	\$ 65
2x2x2 Non-Shrink Grout, C 109	\$ 65

ASPHALT

Air Voids, T 269	\$ 90
Asphalt Mix Design, Caltrans (incl. Aggregate Quality)	\$ 4,500
Asphalt Mix Design Review, Job Spec	\$ 190
Dust Proportioning, CT LP-4	\$ 95
Extraction, % Asphalt including Gradation, D 2172, CT 382	\$ 260
Extraction, % Asphalt without Gradation, D 2172, CT 382	\$ 160
Film Stripping, CT 302	\$ 130
Hveem Stability and Unit Weight D 1560, T 246, CT 366	\$ 240
Marshall Stability, Flow and Unit Weight, T 245	\$ 250
Maximum Theoretical Unit Weight, D 2041, CT 309	\$ 160
Moisture Content, CT 370	\$ 105
Moisture Susceptibility and Tensile Stress Ratio, T 238, CT 371	\$ 1,000
Sturry Wet Track Abrasion, D 3910	\$ 160
Superpave, Asphalt Mix Verification (incl. Aggregate Quality)	\$ 4,900
Superpave, Gyroatory Unit Wit., T 312	\$ 110
Superpave, Hamburg Wheel, 20,000 passes, T 324	\$ 1,200
Unit Weight sample or core, D 2726, CT 308	\$ 110
Voils in Mineral Aggregate, (VMA) CT LP-2	\$ 100
Voils filled with Asphalt, (VFA) CT LP-3	\$ 100
Wax Density, D 1188	\$ 150

AGGREGATES

Clay Lumps and Friable Particles, C 142	\$ 190
Cleaness Value, CT 227	\$ 190
Crushed Particles, CT 205	\$ 180
Durability, Coarse or Fine, CT 229	\$ 205
Fine Aggregate Angularity, ASTM C 1252, T 304, CT 234	\$ 180
Flat and Elongated Particle, D 4791	\$ 230
Lightweight Particles, C 123	\$ 180
Los Angeles Abrasion, C 131 or C 535	\$ 220
Material Finer than No. 200 Sieve by Washing, C 117	\$ 100
Organic Impurities, C 40	\$ 100
Potential Alkali Reactivity, Mortar Bar Method, Coarse, C 1260	\$ 1,250
Potential Alkali Reactivity, Mortar Bar Method, Fine, C 1260	\$ 950
Potential Reactivity of Aggregate (Chemical Method), C 289	\$ 495
Sand Equivalent, T 176, CT 217	\$ 130
Sieve Analysis, Coarse Aggregate, T 27, C 136	\$ 130
Sieve Analysis, Fine Aggregate (including wash), T 27, C 136	\$ 150
Sodium Sulfate Soundness, C 88	\$ 450
Specific Gravity and Absorption, Coarse, C 127, CT 206	\$ 120
Specific Gravity and Absorption, Fine, C 128, CT 207	\$ 180

ROOFING

Roofing Tile Absorption, (set of 5), C 67	\$ 250
Roofing Tile Strength Test (set of 5), C 67	\$ 250

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides:

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

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

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

Date: 5/15/2026

Name of Consultant: Ninyo & Moore

Signature: 

Print Name and Title: Ransom Hennefer, Principal Engineer

(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 Agreement.)

**PREVAILING WAGE AND
RELATED LABOR REQUIREMENTS CERTIFICATION**

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours' notice, payroll records, and apprentice and trainee employment requirements, for all Services related to any project including, without limitation, labor compliance monitoring and enforcement by the Department of Industrial Relations.

Date: 5/15/2026

Name of Consultant: Ninyo & Moore

Signature: 

Print Name and Title: Ransom Hennefer, Principal Engineer

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

The undersigned does hereby certify to District that I am a representative of Consultant entering into this Agreement with District; that I am familiar with the facts herein certified; and that I am authorized and qualified to execute this certificate on behalf of Consultant.

Consultant certifies that it has taken at least one of the following actions (check all that apply):

- ☒ The Services of the Agreement is either (i) at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of the Agreement shall come in contact with District pupils or (ii) if Consultant's employees or any subcontractor or supplier of any tier of the Agreement interacts with pupils, such interaction shall only take place under the immediate supervision and control of the pupil's parent or guardian or a school employee, so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Consultant under the Agreement.
- ☐ Consultant, who is not a sole proprietor, has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Consultant's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing the Services, and the California Department of Justice has determined (A) that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). When Consultant performs the criminal background check, it shall immediately provide any subsequent arrest and conviction information it receives to District pursuant to the subsequent arrest service. No work shall commence until the Department of Justice ascertains that Consultant's employees and any subcontractors' employees have not been convicted of a felony as defined in Education Code Section 45122.1.

A complete and accurate list of Consultant's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto as ATTACHMENT "A."

- ☐ Consultant is a sole proprietor and intends to comply with the fingerprinting requirements of Education Code section 45125.1(h) with respect to all Consultant's employees who may have contact with District pupils in the course of providing the Services, and hereby agrees to District's preparation and submission of fingerprints such that the California Department of Justice may determine (A) that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). No work shall commence until the Department of Justice ascertains that Consultant has not been convicted of a felony as defined in Education Code Section 45122.1.

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

FINGERPRINTING CERTIFICATION/CRIMINAL BACKGROUND INVESTIGATION

ATTACHMENT "A"

List of Employees/Subcontractors

Name/Company: _____
Name/Company: _____
Name/Company: _____
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Name/Company: _____

If further space is required for the list of employees/subcontractors, attach additional copies of this page.

5/15/2026

Date: _____
Name of Consultant: Ninyo & Moore
Signature: 
Print Name: Ransom Hennefer
Title: Principal Engineer

[End of document.]