

## SCOPE OF SERVICES FOR CONSTRUCTION MATERIALS ENGINEERING AND TESTING SERVICES

Santa Rosa City Schools (SRCS), referred to as “CLIENT”, and Crawford & Associates, referred to as “Crawford”, agree to provide Materials Testing and Inspection services for the following project.

**Project Name:** SRSC: Special Inspections – <sup>8</sup>~~6~~ Secondary School – Pier-Supported Solar Arrays:

- Rincon Valley MS – 4650 Badger
- Santa Rosa MS – 500 E Street
- Maria Carrillo HS – 6975 Montecito Boulevard
- Santa Rosa HS – 1235 Mendocino Avenue
- Herbert Slater MS – 3500 Sonoma Avenue
- Cesar Chavez Language Academy – 2480 Sebastopol Road
- Piner HS – 1700 Fulton Road
- Montgomery HS – 1250 Hahman Drive

### Description of Scope and Services to Be Provided:

- Batch plant inspection of concrete
- Special Inspection of concrete and preparation of test specimens for laboratory testing
- Sample and identify rebar samples at fabricators facility
- Welding shop inspection and material identification
- Laboratory testing, project management and reporting

### Estimated Completion Date:

- December 31, 2024

*\*Estimated date of completion is contingent on when we receive the signed agreement and specified retainer.*

Prevailing Wage rates **do** apply to this project.

**Payment Terms:** Net 15

**Fee Estimate:** CLIENT agrees to pay at the hourly rates and to pay all other costs for the work or portion of work performed as set forth in the “SCHEDULE OF RATES” attached and made a part of this Agreement. The time and material based not to exceed fee is: **\$156,889\***

*\*This is an estimate of the anticipated costs associated with the services we are proposing to provide. An estimate is made with our best professional judgment, but we cannot anticipate everything that will happen during the course of completing your project and there are often unforeseen circumstances or conditions that result in a greater commitment of staff resources than the originally estimated amount. Crawford reserves the right, as a condition of this service agreement, to invoice up to an amount 10% greater than the amount originally estimated without CLIENT consultation and without a fully executed service agreement amendment.*

## AGREEMENT FOR CONSTRUCTION MATERIALS ENGINEERING AND TESTING SERVICES

**THIS AGREEMENT**, effective as of this 11<sup>th</sup> day of January 2024, is by and between Santa Rosa City Schools (“CLIENT”) and Crawford & Associates, Inc., (“CONSULTANT”).

**THE PROJECTS** are generally described as: SRCS: Solar Array Inspections at Rincon Valley MS, Santa Rosa MS, Maria Carrillo HS, Santa Rosa HS, Herbert Slater MS, Cesar Chavez Language Academy, Piner HS and Montgomery HS

**THE PROJECT** are at aforementioned Various sites in Santa Rosa, California (“project sites”).

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

- CONSULTANT’s Scope of Services (Page 1)
- CONSULTANT’s Agreement (Page 2)
- General Conditions for Construction Materials Engineering and Testing Services (Page 3);
- CONSULTANT’s Fee Schedule, attachment (Exhibit A);
- Any documents specifically listed below or incorporated by reference in the listed documents.

CONSULTANT agrees to perform the services set forth in this AGREEMENT according to its terms, including all attachments incorporated herein by reference. This AGREEMENT may be modified or altered *only* in writing, as specifically described in this AGREEMENT.

	CLIENT	CONSULTANT
<b>Signature:</b>		<i>Shawn Leyva</i>
<b>Print Name:</b>	Lisa August	Shawn Leyva, PE
<b>Title:</b>	Assistant Superintendent	Principal
<b>Company:</b>	Santa Rosa City Schools	Crawford & Associates, Inc
<b>Address:</b>	211 Ridgway Drive	3325 Regional Parkway, Suite 8
	Santa Rosa, CA 95401	Santa Rosa, CA 95403
<b>Date:</b>		12-10-2023

## GENERAL CONDITIONS FOR CONSTRUCTION MATERIALS ENGINEERING AND TESTING SERVICES

### 1. DEFINITIONS

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

**1.2 Contractor.** The Contractor or Contractors, including its/their subcontractors of every tier, retained to perform construction work on the project for which CONSULTANT is providing SERVICES under this AGREEMENT.

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

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

**1.5 Hazardous Materials.** Any toxic substances, chemicals, radioactivity, pollutants, or other materials, in whatever form or state, known or suspected to impair the environment in any way whatsoever. Hazardous materials include, but are not limited to, those substances defined, designated, or listed in any federal, state, or local law, regulation, or ordinance concerning hazardous wastes, toxic substances, or pollution.

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

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

**1.8 General Contractor.** The contractor that has overall responsibility for project-site activities, including site safety and security, and is in charge of all other contractors and subcontractors hired for the project.

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

**1.10 Services.** The professional SERVICES provided by CONSULTANT under this AGREEMENT including SERVICES described in the scope of SERVICES (Page 1) and any written task order or amendment to this AGREEMENT.

**1.11 Subcontractor.** Contractor hired by the General Contractor or another contractor or subcontractor.

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

**1.13 Work.** A contractor's or subcontractor's labor, materials, equipment, and constructed results.

### 2. ACCEPTANCE OF TERMS AND CONDITIONS

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

### 3. SCOPE OF SERVICES

**3.1 Services Provided; Independent Contractor.** CONSULTANT will provide the SERVICES set forth in the scope of SERVICES (Page 1) as an independent contractor.

**3.2 Authority of CONSULTANT.** CONSULTANT will report to CLIENT data and results of observation, inspection, and testing as set forth in the scope of SERVICES (Page 1). CONSULTANT will report to CLIENT or CLIENT's representative observed or inspected work that, in CONSULTANT's opinion, fails to conform to project plans and specifications. CONSULTANT has no right or responsibility to approve, accept, reject, or stop work of any agent of CLIENT. No action of CONSULTANT or CONSULTANT's site representative(s) shall be construed by any party as revoking, altering, enlarging, relaxing, or releasing any requirement of the plans, specifications, and codes applicable to the project or any AGREEMENT between CLIENT and others. Such rights are reserved solely for CLIENT

**3.3 Variation of Material Characteristics and Conditions.** CONSULTANT's observations and standardized sampling, inspection, and testing procedures indicate conditions of materials and construction activities only at the precise location where and precise time when CONSULTANT performed SERVICES. CLIENT recognizes that conditions of materials and construction activities at other locations may vary from those measured, observed, or inspected, and that conditions at one location and time cannot be relied on to indicate the conditions at other locations and times, even when the materials involved appear to be identical. Nonetheless, CONSULTANT may make inferences based upon the information derived from these procedures to formulate professional opinions about conditions in other areas. Nonetheless, CONSULTANT is responsible only for those data, interpretations, and recommendations about the actual materials and construction activities it observes, inspects, samples, or tests. Even if performed on a continuous basis, SERVICES do not and should not be interpreted to mean that CONSULTANT is observing, inspecting, or testing all materials on the project. CONSULTANT is not responsible for other parties' interpretations or use of the information CONSULTANT developed.

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

**3.5 Changes in Scope.** If CONSULTANT provides CLIENT with a writing confirming a change in the SCOPE OF SERVICES, it will become an amendment to this AGREEMENT unless CLIENT objects in writing within 5 business days after receipt. All SERVICES performed by CONSULTANT on the Project are subject to the terms and limitations of this AGREEMENT. If SERVICES are performed, but the parties do not reach AGREEMENT concerning modifications to the SCOPE OF SERVICES or compensation, then the terms and limitations of this AGREEMENT apply to such SERVICES, except for the payment terms. The parties agree to resolve disputes concerning modifications to scope or compensation pursuant to Section 19, "Disputes."

**3.6 Licenses.** CONSULTANT will procure and maintain business and professional licenses and registrations necessary to provide its SERVICES.

**3.7 Excluded Services.** CONSULTANT'S SERVICES under this AGREEMENT include only those SERVICES specified in the SCOPE OF SERVICES, or a written amendment(s) thereto. Engineer shall have no other responsibility or obligation except as agreed to in writing.

CLIENT expressly waives any claim against CONSULTANT resulting from its failure to perform recommended additional SERVICES that CLIENT has not authorized CONSULTANT to perform, and any claim that CONSULTANT failed to perform SERVICES that CLIENT instructed CONSULTANT not to perform.

**3.8 No Fiduciary Responsibility.** CLIENT agrees that CONSULTANT has been engaged to provide technical professional SERVICES only and that CONSULTANT does not owe a fiduciary responsibility to CLIENT or to the project Owner, if different from CLIENT.

#### 4. PAYMENTS TO CONSULTANT

**4.1 Basic Services, Fees, and Expenses.** CONSULTANT will perform SERVICES for the amount(s) set forth in the Fee Estimate on Page 1 and Fee Schedule (Exhibit A). CLIENT acknowledges that the Fee Schedule is subject to periodic review and amendment to reflect CONSULTANT's then-current fee structure. CONSULTANT will give CLIENT at least thirty (30) days' advance notice of any changes to its Fee Schedule. Unless CLIENT objects in writing to such changes within thirty (30) days of notification, the amended fee structure will be incorporated into this AGREEMENT and will supersede any prior fee structure.

**4.2 Additional Services.** Any SERVICES CONSULTANT performs under this AGREEMENT, except those SERVICES expressly identified otherwise in the scope of SERVICES (Page 1), will be performed on a time-and-materials basis unless both parties specifically agree otherwise in writing.

**4.3 Estimate of Fees and Expenses.** CONSULTANT will, to the best of its ability, perform the SERVICES and accomplish the objectives defined in this AGREEMENT for no more than the cost (Consultant's fee and expenses) estimated in writing by Consultant. Client recognizes that unforeseen circumstances, including scope and schedule changes, can affect Consultant's ability to complete its SERVICES for no more than the estimated cost. Accordingly, Client agrees that a cost estimate or "not-to-exceed" limitation does not constitute a guarantee that Consultant will be able to complete the SERVICES for that amount. Instead, a cost estimate or "not-to-exceed" limitation indicates only that Consultant will not incur costs in excess of the estimate or limitation amount without first obtaining Client's AGREEMENT to do so.

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**4.6 Payment Timing; Late Charge.** CONSULTANT will submit invoices to CLIENT periodically, but no more frequently than once a month. All invoices are due and payable upon presentation. Any undisputed amounts unpaid thirty (30) days after the invoice date will include a late-payment charge from the date of the invoice, at 1½% per month or the maximum legal rate, whichever is lower. CLIENT's failure to pay CONSULTANT within thirty (30) days of the date of CONSULTANT's invoice will constitute CLIENT's substantial failure to perform under this AGREEMENT, and CLIENT will remunerate CONSULTANT for all time spent and all expenses incurred (including, but not being limited to, the fees and expenses of any collection agency and/or attorney, and any court costs) in connection with collecting any delinquent amount. In addition, Engineer may suspend performance of the SERVICES when such failure to pay continues for fifteen (15) days following notice to Client of the same.

**4.7 Payment Disputes.** If CLIENT objects to any portion of an invoice, CLIENT must so notify CONSULTANT in writing within ten (10) days of the invoice date, identifying in such notice the cause of the disagreement. The parties will immediately make every effort to resolve the disputed portion of the invoice. Payment thereafter will first be applied to accrued interest and then to the unpaid principal amount.

### 5. PERFORMANCE STANDARD

**5.1 Level of Service.** CONSULTANT offers different levels of geotechnical engineering SERVICES to suit the desires and needs of different clients. Although the possibility of error can never be eliminated, more detailed and extensive SERVICES yield more information and reduce the probability of error, but at increased cost. CLIENT must determine the level of SERVICES adequate for its purposes. CLIENT has reviewed the Scope of SERVICES and has determined that it does not need or want a greater level of SERVICES than that being provided.

**5.2 Standard of Care.** Subject to the limitations inherent in the agreed Scope of SERVICES as to the degree of care, the amount of time and expenses to be incurred, and subject to any other limitations contained in this AGREEMENT, CONSULTANT will perform its SERVICES consistent with that level of care and skill ordinarily exercised by other professional engineers practicing in the same locale and under similar circumstances at the time the SERVICES are performed. No representation, express or implied, and no warranty or guarantee is included in or intended by this AGREEMENT or by any report, opinion, document, or other instrument of professional service. CONSULTANT disclaims any implied warranties or warranties imposed by law, including warranties of merchantability and fitness for a particular purpose. Even if performed on a continuous basis, CONSULTANT's SERVICES do not constitute observing, inspecting, or verifying placement of all materials of the project.

**5.3 Compliance with Codes and Referenced Standards.** As required by the applicable standard of care, CONSULTANT will perform its SERVICES in accordance with federal, state, and local codes, standards, statutes, and regulations applicable to CONSULTANT when CONSULTANT prepared the scope of SERVICES (Page 1). CONSULTANT will perform its observations, inspections, and tests in general accordance with the standards CONSULTANT references. CONSULTANT makes no representation about compliance with any standards it does not reference.

**5.4 Sampling, Observation, Inspection, and Test Locations.** Unless specifically stated otherwise, the scope of SERVICES (Page 1) excludes surveying the project site or precisely identifying sampling, observation, inspection, or test locations, depths, or elevations. In accordance with customary practice, CONSULTANT will base sampling, observation, inspection, and test locations, depths, and elevations on field estimates and information furnished by CLIENT and its representatives. Unless stated otherwise in CONSULTANT's report(s), such locations, depths, and elevations are approximate.

**5.5 Sample Disposal.** CONSULTANT will dispose of samples immediately after submitting the report covering those samples. If CLIENT prefers CONSULTANT to store samples for a longer period or transfer them to another party, CLIENT shall submit to CONSULTANT a timely written notice through which CLIENT also agrees to appropriately compensate CONSULTANT for the additional service.

**5.6 Buried Utilities and Structures; Property/Work Restoration.** If the SERVICES require borings, test pits, or other invasive subsurface-exploratory SERVICES, CLIENT will provide to CONSULTANT all information it possesses about the location and nature of underground utilities and structures. To reduce the risk of damage or injury to underground utilities and structures, CONSULTANT will rely on CLIENT-furnished information and will also contact an appropriate utility locator. CLIENT agrees to hold CONSULTANT harmless for any damage to underground utilities or structures that are not called to CONSULTANT's attention or that are shown incorrectly on plans or drawings furnished for the purpose of locating such utilities and structures. CONSULTANT will take reasonable

precautions to limit the damage to the project site or work caused by the performance of its SERVICES. CLIENT understands that some damage may necessarily occur in the normal course of performing SERVICES, and that this AGREEMENT excludes repair of such damage unless specifically stated otherwise in the scope of SERVICES (Page 1) or via a subsequent amendment to this AGREEMENT.

## 6. CONTRACTOR'S PERFORMANCE

CONSULTANT is not responsible for any contractor's means, methods, techniques, or sequences during the performance of any contractor's work. CONSULTANT will not supervise or direct any contractor's work nor be liable for any failure of contractor to complete its work in accordance with the project's plans, specifications, and/or applicable codes, laws, and regulations. CLIENT understands and agrees that the general contractor, not CONSULTANT, has sole responsibility for the safety and security of persons and property at the project site. CONSULTANT shall not be responsible for the acts, errors or omissions of the Contractor, Owner, CLIENT other consultants, or any other persons or entities performing work on the project, except those under the direct control of CONSULTANT.

## 7. CLIENT'S RESPONSIBILITIES

In addition to compensating CONSULTANT for SERVICES, CLIENT agrees to:

**7.1 Cooperation.** Assist and cooperate with CONSULTANT in any manner necessary and within its ability to facilitate CONSULTANT's performance under this AGREEMENT.

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

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

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

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## 9. CERTIFICATIONS

CLIENT agrees not to require that CONSULTANT execute any certification with regard to SERVICES performed or Work tested and/or observed under this AGREEMENT unless: 1) CONSULTANT believes that it has performed sufficient SERVICES to provide a sufficient basis to issue the certification; 2) CONSULTANT believes that the SERVICES performed or Work tested and/or observed meet the criteria of the certification; and 3) CONSULTANT has reviewed and approved in writing the exact form of such certification prior to execution of this AGREEMENT. Any certification by CONSULTANT is limited to an expression of professional opinion based upon the SERVICES performed by CONSULTANT and does not constitute a warranty or guarantee, either expressed or implied. Any such certification in no way relieves the contractor or any other party from meeting requirements imposed by contract or other means, including industry standards. CLIENT further agrees not to make resolution of any dispute with the CONSULTANT or payment of any sums due CONSULTANT in any way contingent on CONSULTANT signing any such certification or similar document.

## 10. ALLOCATION OF RISK

**10.1 Limitation of Remedies.** In recognition of the relative risks and benefits of the project to CLIENT and CONSULTANT, the risks are allocated such that CLIENT agrees, to the fullest extent permitted by law, that the total cumulative liability of CONSULTANT, its subconsultants and subcontractors, and all of their respective shareholders, directors, officers, employees and agents (collectively "CONSULTANT Entities"), to CLIENT arising from SERVICES under this AGREEMENT, including any indemnity obligation, any defense costs and attorney's fees, and any consequential damages which may be due under this AGREEMENT, will not exceed the gross compensation received by CONSULTANT under this AGREEMENT or \$50,000, whichever is greater; provided, however, that such

liability is further limited as described below. This limitation applies to all lawsuits, claims or actions that allege errors or omissions in CONSULTANT Entities' SERVICES, whether alleged to arise in tort, contract, warranty, or other legal theory.

## **10.2. Indemnification.**

**10.2.1. Indemnification of CLIENT.** Subject to all otherwise applicable statutes of limitations and repose and the provisions and limitations of this AGREEMENT, including section 10.1 above, CONSULTANT agrees to indemnify and hold harmless CLIENT its shareholders, officers, directors, and employees from and against any and all third party claims, suits, liabilities, damages, expenses, or losses (including reimbursement of reasonable attorney's fees and costs of defense), (collectively "Losses") to the extent caused by CONSULTANT's negligent performance of its SERVICES under this AGREEMENT. With regard to any claim alleging CONSULTANT'S negligent performance of professional SERVICES, CONSULTANT's defense obligation under this indemnity paragraph means only the reimbursement of reasonable defense costs to the proportionate extent of its actual indemnity obligation hereunder. The indemnity obligations provided under this section shall only apply to the extent such Losses are determined by a court of competent jurisdiction or arbitrator to have been caused by the negligence of Engineer.

**10.2.2. Indemnification of CONSULTANT.** CLIENT will indemnify and hold harmless CONSULTANT Entities from and against any and all Losses to the extent caused by the negligence or willful misconduct of CLIENT, its employees, agents and contractors. In addition, except to the extent caused by CONSULTANT's sole negligence, CLIENT expressly agrees to defend, indemnify and hold harmless CONSULTANT Entities from and against any and all Losses arising from or related to the existence, disposal, release, discharge, treatment or transportation of Hazardous Materials, or the exposure of any person to Hazardous Materials, or the degradation of the environment due to the presence, discharge, disposal, release of or exposure to Hazardous Material.

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

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

**10.5. Consequential Damages.** Neither CLIENT nor CONSULTANT will be liable to the other for any special, consequential, incidental, indirect, punitive or penal losses or damages including but not limited to losses, damages or claims related to the unavailability of property or facilities, shutdowns or service interruptions, loss of use, profits, revenue, business, reputation, financing or inventory, or for use charges, cost of capital, or claims of the other party or its customers. This waiver applies to all such claims and damages, whether based on contract, warranty, tort or any other legal theory.

**10.6. Continuing AGREEMENT.** The indemnity obligations, limitation of remedies, and consequential damages waiver established under this AGREEMENT will survive the expiration or termination of this AGREEMENT. If CONSULTANT provides additional or different SERVICES to CLIENT that the parties do not confirm through execution of an amendment to this AGREEMENT, the obligations of the parties to indemnify each other, the limitations on liability, and the consequential damages waiver established under this AGREEMENT apply to such SERVICES as if the parties had executed an amendment.

## **11. INSURANCE**

**11.1 CONSULTANT's Insurance.** If reasonably available, CONSULTANT will maintain the following coverages:

**11.1.1** Statutory workers' compensation/employer's liability insurance;

**11.1.2** Commercial general liability insurance with a combined single limit of \$1,000,000;

**11.1.3** Automobile liability insurance, including liability for all owned, hired, and non-owned vehicles with a combined single limit per occurrence of \$1,000,000; and

**11.1.4** Professional liability insurance with a limit of at least \$1,000,000 per claim and annual aggregate.

**11.2 CLIENT's Insurance.** As appropriate, CLIENT will obtain builder's risk insurance or other property insurance to protect it from injury or damage to the project, and which waives all rights of subrogation against CONSULTANT, and names CONSULTANT as an additional insured. Proceeds from such insurance will be held by CLIENT as trustee and will be payable to CONSULTANT as its interests appear. CLIENT will also require that all contractors and subcontractors for the Project name CONSULTANT as an additional insured under their General Liability and Automobile Liability insurance policies

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

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

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

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

**12.2.1 Use by CLIENT.** CLIENT has CONSULTANT's permission to use CONSULTANT's instruments of professional service for purposes reasonably connected with this project, including, without limitation, the project's design and licensing requirements.

**12.2.2 Use by CONSULTANT.** CONSULTANT may use CONSULTANT's instruments of professional service for any purpose. CONSULTANT owns any patentable concepts or copyrightable materials arising from CONSULTANT's SERVICES.

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

**12.4 Unauthorized Use and Reliance.** No party other than CLIENT may rely on CONSULTANT's instruments of professional service without CONSULTANT's prior written consent, CONSULTANT's receipt of additional compensation, and the written AGREEMENT of the party seeking reliance to be bound by the same terms and conditions as CLIENT herein. CLIENT waives any and all claims against CONSULTANT resulting from the unauthorized use or alteration of instruments of professional service, including those in electronic format, by CLIENT or any party obtaining instruments of professional service through CLIENT. CLIENT will defend, indemnify, and hold harmless CONSULTANT from and against any claim, action, or proceeding brought by any party claiming to have relied upon information or opinions contained in instruments of professional service without having obtained CONSULTANT's prior written consent to do so, and any claim arising out of or related to the unauthorized use, reuse, or modification of the instruments of professional service by CLIENT or any party obtaining them through CLIENT.

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

## **13. SUSPENSION AND DELAY; TERMINATION**

**13.1 Suspension and Delay.** Upon ten (10) days' written notice to CONSULTANT, CLIENT may suspend CONSULTANT's SERVICES. Upon ten (10) days' written notice to CLIENT, CONSULTANT may terminate this AGREEMENT if CLIENT suspends the SERVICES for more than 60 days, in which case CLIENT will compensate CONSULTANT as provided in Section 13.4. If CLIENT suspends the SERVICES, or if CLIENT or others delay

CONSULTANT's SERVICES, CLIENT and CONSULTANT agree to equitably adjust the time for completion of the SERVICES and CONSULTANT's compensation for the additional labor, equipment, and other expenses associated with maintaining CONSULTANT's workforce for CLIENT's benefit during the delay or suspension, and any expenses incurred by CONSULTANT for demobilization and subsequent remobilization.

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

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

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

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

## 14. DISPUTES

**14.1 Mediation.** All disputes between CONSULTANT and CLIENT are subject to mediation before either party initiates any other method of dispute resolution. Either party may demand mediation by serving a written notice stating the essential nature of the dispute, the amount of time or money claimed, and requiring that the matter be mediated. Should mediation fail to resolve the dispute, the parties shall proceed to nonbinding arbitration before a mutually agreed-upon arbitrator(s) or to litigation, as mutually agreed by the parties.

**14.2 Choice of Law; Venue.** This AGREEMENT will be construed in accordance with and governed by the laws of the state in which the project is located.

**14.3 Statutes of Limitations.** Any claim related to or arising out of this AGREEMENT by either party, whether known or unknown, including but not limited to claims for breach of this AGREEMENT or for the failure to perform in accordance with the applicable standard of care, shall be made within two (2) years from the time the CLIENT knew or should have known of its claim, but in any event, not later than four (4) years after the completion of CONSULTANT'S SERVICES on the project.

## 15. MISCELLANEOUS

**15.1 Assignment and Subcontracts.** During the term of this AGREEMENT and following its termination for any reason, neither CLIENT nor CONSULTANT shall assign, convey, sublet or transfer any rights under or interest in this AGREEMENT without the prior written consent of the other party, including but not limited to, (a) any interest in the proceeds of this AGREEMENT, or any proceeds of claims arising from or under this AGREEMENT; (b) any rights, claims, or causes of action alleging breach, loss or damages arising from or under this AGREEMENT; (c) the control of claims or causes of action against the other party arising from or under this AGREEMENT; and (d) any proceeds from claims or causes of action as security, collateral or the source of payment for any notes or liabilities to any third party. This section shall not, however, apply to any subrogation rights (if any) of any insurer of either party. Any assignment that fails to comply with this paragraph will be void and of no effect. CONSULTANT may subcontract for the SERVICES of others without obtaining CLIENT's consent if CONSULTANT deems it necessary or desirable for others to perform certain SERVICES.

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

AGREEMENT reformed to as closely approximate the stricken portions as the law allows, and the remaining provisions of this AGREEMENT shall be valid and binding on both the CLIENT and CONSULTANT.

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

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

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

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

**15.7 Precedence.** These General Conditions take precedence over any inconsistent or contradictory provisions contained in any other AGREEMENT term, proposal, purchase order, requisition, notice to proceed, or other document regarding CONSULTANT's SERVICES.

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

**15.9 No Third Party Rights.** Nothing in this AGREEMENT or as a consequence of any of the SERVICES provided gives any rights or benefits to anyone other than the CLIENT and CONSULTANT. All duties and responsibilities undertaken in this AGREEMENT are for the sole use and exclusive benefit of CLIENT and not for the use or benefit of any other party.

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***End of General Conditions***