

**AGREEMENT FOR ENGINEERING SERVICES
BY AND BETWEEN
SAN JOSÉ UNIFIED SCHOOL DISTRICT
AND
PAVEMENT ENGINEERING INC.
FOR
PROJECT Z0534 - 2025 PAVING MAINTENANCE**

TABLE OF CONTENTS

Article 1	Definitions.....	1
Article 2	Scope, Responsibilities, and Services of Engineer.....	3
Article 3	Engineer Staff.....	5
Article 4	Schedule of Services	5
Article 5	Construction Cost Budget	5
Article 6	Fee and Method of Payment	6
Article 7	Payment for Extra Services or Changes	7
Article 8	Ownership of Data	7
Article 9	Termination of Agreement	8
Article 10	Indemnity and Duty to Defend / Engineer Liability	10
Article 11	Fingerprinting.....	11
Article 12	Responsibilities of the District	11
Article 13	Liability of District	11
Article 14	Nondiscrimination.....	12
Article 15	Insurance	12
Article 16	Covenant Against Contingent Fees	12
Article 17	Entire Agreement/Modification	12
Article 18	Non-Assignment of Agreement	12
Article 19	Law, Venue.....	13
Article 20	Alternative Dispute Resolution.....	13
Article 21	Severability	14
Article 22	Employment Status	14
Article 23	Warranty and Certification of Engineer	15
Article 24	Cost Disclosure - Documents and Written Reports.....	15
Article 25	Notices and Communications	15
Article 26	Disabled Veteran Business Enterprise Participation.....	16
Article 27	District’s Right to Audit	16
Article 28	Other Provisions.....	16
 EXHIBIT “A” – RESPONSIBILITIES AND SERVICES OF ENGINEER		A-1
EXHIBIT “B” – CRITERIA AND BILLING FOR EXTRA SERVICES		B-1
EXHIBIT “C” – SCHEDULE OF SERVICES		C-1
EXHIBIT “D” – PAYMENT SCHEDULE		D-1
EXHIBIT “E” – INSURANCE REQUIREMENTS		E-1

CERTIFICATES

AGREEMENT FOR ENGINEERING SERVICES

This Agreement for Engineering Services is made as of the 18th day of October 2024, between the **San José Unified School District**, a California public school district, (“District”) and **Pavement Engineering Inc.** (“Engineer”) (individually a “Party” and collectively the “Parties”), for the following project (“Project”):

Z0534 – 2025 Paving Maintenance, located at: Bret Harte Middle School, Willow Glen Middle School, Willow Glen High School, District Operations, Williams Elementary School, and San José High School Annex

See **Exhibit “A”** for detailed Project scope and description.

The Project may include multiple components. Any one of the components or combination thereof may be changed, including terminated, in the same manner as the Project, as indicated herein, without changing in any way the remaining component(s). The provisions of this Agreement shall apply to each component without regard to the status of the remaining component(s).

WITNESSETH, that for and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

Article 1. DEFINITIONS

- 1.1. In addition to the definitions above, the following definitions for words and phrases shall apply when used in this Agreement, including all Exhibits:
 - 1.1.1. **Agreement**: The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
 - 1.1.2. **Engineer**: The Engineer listed in the first paragraph of this Agreement, including all Consultants to the Engineer.
 - 1.1.3. **As-Built Drawings (“As-Builts”)**: Any document prepared and submitted by District’s contractor(s) that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by change orders.
 - 1.1.4. **Bid Set**: The plans, drawings, and specifications at the end of the Construction Documents Phase that any governmental agencies with jurisdiction has approved and that the District can use to go out to bid for construction of the Project.
 - 1.1.5. **Conforming Set**: The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase.
 - 1.1.6. **Construction Budget**: The total amount indicated by the District for the entire Project plus all other costs, including design, construction, administration, financing, and all other costs.
 - 1.1.7. **Construction Cost Budget**: The total cost to District of all elements of the Project designed or specified by the Engineer, as adjusted at the end of each design phase in accordance with this Agreement. The Construction Cost Budget does not include the compensation of the Engineer and Consultants, the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District, including construction management.
Consultant(s): Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Engineer.

- 1.1.9. **District**: The San José Unified School District.
- 1.1.10. **DSA**: The Division of the State Engineer.
- 1.1.11. **Record Drawings**: A final set of drawings prepared by the Engineer that incorporates all changes from all As-Builts, sketches, details, and clarifications.
- 1.1.12. **Service(s)**: All labor, materials, supervision, services, tasks, and work that the Engineer is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of the Project.
- 1.1.13. **Visually Verify**: To verify to the fullest extent possible by physical inspection and reasonable investigation and without any destructive action.

Article 2. SCOPE, RESPONSIBILITIES, AND SERVICES OF ENGINEER

- 2.1. Engineer shall render the Services as described in Exhibit “A,” in accordance with the schedule attached as Exhibit “C.”
- 2.2. Engineer recognizes that the District may obtain the services of a construction manager for this Project. The construction manager, if any, would be authorized to give Engineer Services authorizations, and issue written approvals and Notices to Proceed on behalf of District. The District reserves the right to designate a different construction manager at any time. Any task, including, but not limited to, reviews or approvals that the District may perform pursuant to this Agreement may be performed by the construction manager, unless that task indicates it shall be performed by the governing board of the District.
- 2.3. Engineer shall provide Services that comply with professional Engineering standards and applicable requirements of federal, state, and local law including, without limitation:
 - 2.3.1. Uniform Building Code, latest addition, and the California Code of Regulations, Title 24, including amendments.
 - 2.3.2. Regulations of the State Fire Marshall (title 19, California Code of Regulations) and Pertinent Local Fire Safety Codes.
 - 2.3.3. Americans with Disabilities Act.
 - 2.3.4. Education Code of the State of California.
 - 2.3.5. Government Code of the State of California.
 - 2.3.6. Labor Code of the State of California, division 2, part 7, Public Works and Public Agencies.
 - 2.3.7. Public Contract Code of the State of California.
 - 2.3.8. U. S. Copyright Act.
- 2.4. **Storm Water.** Engineer, through its Consultant(s), shall be the District’s Qualified Storm Water Developer (QSD) and shall prepare all documents necessary for the District to be in compliance with the current Construction General Permit (CGP) of the State Water Resources Control Board.
- 2.5. Engineer shall contract for or employ at Engineer’s expense, Consultant(s) to the extent deemed necessary for completion of its Services on the Project including, but not limited to, Engineers, mechanical, electrical, structural, civil engineers, landscape Engineers, low voltage, data, and telephone Consultants, and interior designers, licensed as required by the State of California. The names of Consultant(s) shall be submitted to the District for approval prior to commencement of Services, as indicated below. The District reserves the right to reject the Engineer’s use of any particular Consultant. Nothing in the foregoing procedure shall create any contractual relationship between the District and any Consultant(s) employed by the Engineer under terms of the Agreement.

- 2.6. Engineer shall coordinate with District personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work related to the Project. This shall include, without limitation, coordination with the persons responsible for operation of the District's Labor Compliance Program, if any. If the Engineer employs Consultant(s), the Engineer shall ensure that its contract(s) with its Consultant(s) include language notifying the Consultant(s) of the District's Labor Compliance Program, if any.
- 2.7. Engineer shall identify the regulatory agencies that have jurisdiction over essential building and design elements and coordinate with and implement the requirements of the regulatory agencies, including, without limitation, California Department of Education (CDE), the Office of Public School Construction (OPSC), the Department of General Services (DGS), DSA Fire/Life Safety, DSA Access Compliance Section, DSA Structural Safety, State Fire Marshal, County and City Health Inspectors and any regulatory office or agency that has authority for review and supervision of school district construction projects.
- 2.8. Engineer shall provide Services required to obtain local agencies' approval for off-site work related to the Project including review by regulatory agencies having jurisdiction over the Project.
- 2.9. Engineer shall coordinate with the District's Project Inspector(s).
- 2.10. Engineer shall provide computer-generated pictures downloaded to computer files, updated as requested by the District, that the District may use on its website.
- 2.11. Engineer shall coordinate and integrate its work with any of the following information and/or services as provided by District:
 - 2.11.1. Ground contamination or hazardous material analysis.
 - 2.11.2. Any asbestos and/or lead testing, design or abatement.
 - 2.11.3. Compliance with the California Environmental Quality Act ("CEQA"). Engineer agrees to coordinate its work with that of any CEQA consultants retained by the District, to provide current elevations and schematic drawings for use in CEQA compliance documents, and to incorporate any mitigation measures adopted by the District into the Project design at no additional cost to the District. If the District and/or its CEQA consultant does not provide mitigation measures to the Engineer when reasonably required for incorporation into the Project design, the Engineer may invoice the District for the work required to incorporate those mitigation measures as Extra Services.
 - 2.11.4. Historical significance report.
 - 2.11.5. Soils investigation.
 - 2.11.6. Geotechnical hazard report, except as indicated in **Exhibit "A."**
 - 2.11.7. Topographic surveys of existing conditions.
 - 2.11.8. State and local agency permit fees.

Article 3. ENGINEER STAFF

- 3.1. The Engineer has been selected to perform the Services herein because of the skills and expertise of key individuals.
- 3.2. The Engineer agrees that the following key people in Engineer’s firm shall be associated with the Project in the following capacities:

CEO:	William J. Long
Project Manager:	Troy Sisneros
Project Engineer:	Hunter Mosier
CAD:	Jarvis Thor
Administration:	Wendi Drumheiser
Major Consultants:	TBD (if needed) with prior District approval

- 3.3. The Engineer shall not change any of the key personnel listed above without prior notice to and written approval by District, unless said personnel cease to be employed by Engineer. In either case, District shall be allowed to interview and approve replacement personnel.
- 3.4. If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice the Engineer shall have five (5) days to remove that person from the Project and replace that person with personnel acceptable to the District. All lead or key personnel for any Consultant must also be designated by the Consultant and shall be subject to all conditions previously stated in this paragraph.
- 3.5. Engineer represents that the Engineer has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of the Services and that no person having any such interest shall be employed by Engineer.
- 3.6. Engineer shall comply with Education Code section 17302(a) and agrees that any plans, specifications and/or included in the Services shall be prepared under the supervision of licensed personnel, and that licensed personnel shall be in “responsible charge” of persons who observe the construction.

Article 4. SCHEDULE OF SERVICES

The Engineer shall commence Services diligently as described in **Exhibit “A,”** so as to proceed with and complete the Services in compliance with the schedule in **Exhibit “C.”** Time is of the essence and failure of Engineer to perform Services on time as specified in this Agreement is a material breach of this Agreement. It shall not be a material breach if a delay is beyond the Engineer’s and/or its consultant(s)’ reasonable control.

Article 5. CONSTRUCTION COST BUDGET

- 5.1. Engineer hereby accepts the District’s established Construction Cost Budget and Project scope. In accordance with the **Exhibit “A,”** the Engineer shall have responsibility to further develop, review, and reconcile the Construction Cost Budget for the District at the beginning of the Project and at the completion of each design phase. The District and the construction manager shall also have responsibility to develop, review, and reconcile the Construction Cost Budget with the Engineer.

- 5.2. Engineer shall complete all Services as described in **Exhibit "A,"** including all plans, designs, drawings, specifications and other construction documents, so that the cost to construct the work designed by the Engineer will not exceed the Construction Cost Budget, as adjusted subsequently with the District's written approval. The Engineer shall maintain cost controls throughout the Project to deliver the Project within the Construction Cost Budget.
- 5.3. If any of the following events occur:
- The lowest responsive base bid received is in excess of ten percent (10%) of the Construction Cost Budget; or
 - The combined total of base bid and all additive alternates come in ten percent (10%) or more under the Construction Cost Budget; or
 - The Construction Cost Budget increases in phases subsequent to the Schematic Design Phase due to reasonably foreseeable changes in the condition of the construction market in the county in which the District is located, in so far as these have not been caused by Acts of God, earthquakes, strikes, war, or energy shortages due to uncontrollable events in the world economy;

Then the District, in its sole discretion, has one or a combination of the following alternatives:

- 5.3.1. Give the Engineer written approval on an agreed adjustment to the Construction Cost Budget.
- 5.3.2. Authorize the Engineer to re-negotiate, when appropriate, and/or re-bid the Project within three (3) months time of receipt of bids (exclusive of District and other agencies' review time) at no additional cost to the District.
- 5.3.3. Terminate this Agreement if the Project is abandoned, without further obligation by either Party.
- 5.3.4. Within three (3) months time of receipt of bids, instruct Engineer to revise the drawings and specifications (in scope and quality as approved by the District) to bring the Project within the Construction Cost Budget for re-bidding at no additional cost to the District. The modification of Construction Documents shall be the limit of the Engineer's responsibility arising out of the establishment of a Construction Cost Budget. All other obligations of the Engineer, including construction administration services, remain as stated in the Agreement.

Article 6. FEE AND METHOD OF PAYMENT

- 6.1. District shall pay Engineer for all Services contracted for under this Agreement an amount equal to the following ("Fee"):
- An amount not to exceed two hundred ninety-three thousand, five hundred dollars and zero cents (\$293,500.00).
- 6.2. District shall pay Engineer the Fee pursuant to the provisions of **Exhibit "D."**
- 6.3. Engineer shall bill its work under this Agreement in accordance with **Exhibit "D."**

- 6.4. No increase in Fee will be due from change orders generated during the construction period to the extent caused by Engineer's error or omission.
- 6.5. The Engineer's Fee set forth in this Agreement shall be full compensation for all of Engineer's Services incurred in the performance hereof as indicated in **Exhibit "D."**
- 6.6. Regardless of the structure of Engineer's Fee, the Engineer's Fee may be adjusted downward if the Scope of Services of this Agreement is reduced by the District in accordance with this Agreement.

Article 7. PAYMENT FOR EXTRA SERVICES OR CHANGES

District-authorized services outside of the scope in **Exhibit "A"** or District-authorized reimbursables not included in Engineer's fee are "Extra Services." Any charges for Extra Services shall be paid by the District as described in **Exhibit "B"** only upon certification that the claimed Extra Services was authorized as indicated herein and that the Extra Services have been satisfactorily completed. If any service is done by Engineer without prior written authorization by the construction manager or the District's authorized representative, the District will not be obligated to pay for such service. The foregoing provision notwithstanding, the Engineer will be paid by the District as described in **Exhibit "B"** for Extra Services that the construction manager or the District's authorized representative verbally requests, provided that the Engineer confirms such request in writing pursuant to the notice requirements of this Agreement, and proceeds with such Extra Services not earlier than two (2) business days after the District receives confirmation of the request from the Engineer.

Article 8. OWNERSHIP OF DATA

- 8.1. Pursuant to Education Code section 17316, this Agreement creates a non-exclusive and perpetual license for District to use, at its discretion, all plans, including, but not limited to, record drawings, specifications, and estimates that the Engineer or its Consultants, prepares or causes to be prepared pursuant to this Agreement.
- 8.2. The Engineer retains all rights to all copyrights, designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that the Engineer or its Consultants prepares or causes to be prepared pursuant to this Agreement.
- 8.3. The Engineer shall perform the Services and prepare all documents under this Agreement with the assistance of Computer Aided Design Drafting (CADD) (e.g., AutoCAD) Technology. The Engineer shall deliver to the District, on request, a "thumb" drive, and/or compact disc with these documents and that is compatible with the most current version of AutoCAD. As to any drawings that Engineer provides in a CADD file format, the District acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that the District should rely on hard copies of all documents.
- 8.4. In order to evidence what CADD information was provided to the District, Engineer and District shall each sign a "hard" copy of reproducible documents that depict the information at the time Engineer produces the CADD information. District agrees to release Engineer from all liability, damages, and/or claims that arise due to any changes made to this information by any person other than the Engineer or Consultant(s) subsequent to it being provided to the District.

- 8.5. Following the termination of this Agreement, for any reason whatsoever, the Engineer shall promptly deliver to the District upon written request and at no cost to the District the following items (hereinafter "Instruments of Service") in an electronic format requested by District and which the District shall have the right to utilize in any way permitted by statute:
- 8.5.1. One (1) set of the Contract Documents, including the bidding requirements, specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.
 - 8.5.2. One (1) set of fixed image CADD files in DXF format of the drawings that are part of the Contract Documents.
 - 8.5.3. One (1) set of non-fixed image CADD drawing files in DXF and/or DWG format of the site plan, floor plans (Engineering, plumbing, structural mechanical and electrical), roof plan, sections and exterior elevations of the Project.
 - 8.5.4. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, technology data and reports prepared by the Engineer under this Agreement.
- 8.6. In the event the District changes or uses any fully or partially completed documents without the Engineer's knowledge and participation, the District agrees to release Engineer of responsibility for such changes, and shall indemnify, defend and hold the Engineer, harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees, on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of that change or use except to the extent the Engineer is found to be liable in a forum of competent jurisdiction. In the event District uses any fully or partially completed documents without the Engineer's full involvement, the District shall remove all title blocks and other information that might identify the Engineer and the Engineer's Consultants.

Article 9. TERMINATION OF AGREEMENT

- 9.1. If Engineer fails to perform the Services to the satisfaction of the District and as required by this Agreement, or if Engineer fails to fulfill in a timely and professional manner Engineer's material obligations under this Agreement, or if Engineer shall violate any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement, in whole or in part, effective immediately upon the District giving written notice thereof to the Engineer. In the event of a termination pursuant to this subdivision, Engineer may invoice District for all Services performed until the date of the notice of termination. District shall have the right to withhold payment and deduct from Engineer's invoice, any amounts equal to District's costs caused by Engineer's actions, errors, or omissions. The District may, at its discretion, provide the Engineer time to cure its default or breach.
- 9.2. District shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Engineer may invoice District and District shall pay all undisputed invoice(s) for Services performed until the date of District's written notice of termination.
- 9.3. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.

- 9.4. The Engineer has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement. Such termination shall be effective on the date District receives written notice of the termination from Engineer. Engineer may invoice District and District shall pay all undisputed invoice(s) for Services performed until the Engineer's notice of termination.
- 9.5. If, at any time in the progress of the Design of the Project, the governing board of the District determines that the Project should be terminated, the Engineer, upon written notice from the District of such termination, shall immediately cease performing Services. The District shall pay the Engineer only the fee associated with the Services performed, from Engineer's last paid invoice until the date of the notice of termination.
- 9.6. If the District suspends the Project for more than one hundred twenty (120) consecutive days, the Engineer shall be compensated for Services performed prior to the notice of suspension. When the Project is resumed, the schedule shall be adjusted and the Engineer's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Engineer's Services. If the District suspends the Project for more than two (2) years, the Engineer may terminate this Agreement by giving written notice.

Article 10. INDEMNITY AND DUTY TO DEFEND / ENGINEER LIABILITY

- 10.1. To the furthest extent permitted by California law and in accordance with California Civil Code section 2782.8, Engineer shall indemnify, protect, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, members, and volunteers (“Indemnified Parties”) from any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney’s and consultants’ fees and causes of action, including personal injury and/or death (“Claim(s)”), to the extent that the Claim(s) arises out of, pertains to, or relates to the negligence (active or passive, ordinary or gross), recklessness (ordinary or gross), errors or omissions, or willful misconduct of Engineer, its directors, officials, officers, employees, contractors, subcontractors, consultants, subconsultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. This indemnity excludes Engineer’s liability as to the active or sole negligence or willful misconduct of the District.
- 10.2. To the furthest extent permitted by California law and in accordance with California Civil Code section 2782.8, Engineer shall defend and pay all costs, expenses and fees to defend the Indemnified Parties, from any and all Claim(s), to the extent that the Claim(s) arises out of, pertains to, or relates to the alleged negligence (active or passive, ordinary or gross), recklessness (ordinary or gross), errors or omissions, or willful misconduct of Engineer, its directors, officials, officers, employees, contractors, subcontractors, consultants, subconsultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. District shall have the right to accept or reject any legal representation that Engineer proposes to defend the Indemnified Parties.
- 10.3. The following shall be Claims, to the extent they satisfy the definition of Claims herein:
- 10.3.1. **The cost of Project delays.** Without limiting Engineer’s liability for indirect cost impacts due to these delays, the direct costs for which the Engineer shall be liable shall equal the amount the District is liable to Project contractor(s), subcontractor(s), suppliers, inspector(s), construction manager(s) caused by these delays and all interim housing costs caused by these delays.
- 10.3.2. **The cost of construction change orders.** Without limiting Engineer’s liability for indirect cost impacts, the direct costs for which the Engineer shall be liable shall equal the difference between the cost of the change order and the reasonable cost of the work had that work been a part of the originally prepared construction documents.
- These amounts shall be paid by Engineer to District or the District may withhold those costs from amounts owing to Engineer, at the District’s discretion.
- 10.4. Engineer’s duty to indemnify and defend under this Agreement is not limited in any way by the amount or type of damages or compensation payable to Engineer or its Consultants under applicable policies of insurance, workers’ compensation acts, disability benefits acts, or other employee benefits acts. Engineer’s duty to indemnify and defend under this Agreement shall apply during the term of this Agreement and shall survive any expiration or termination of this Agreement until any such Claim(s) are barred by the applicable statute of limitations and is in addition to any other rights or remedies that the District may have under the law or under this Agreement.

Article 11. FINGERPRINTING

The Engineer shall comply with the provisions of Education Code section 45125.01 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Engineer shall not permit any employee to have any contact with District pupils until such time as the Engineer has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Engineer's responsibility shall extend to all employees, agents, and employees or agents of its subcontracts regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Engineer. Verification of compliance with this section and the Criminal Background Investigation Certification (Exhibit "E") shall be provided in writing to the District prior to each individual's commencement of employment or participation on the Project and prior to permitting contact with any student.

Article 12. RESPONSIBILITIES OF THE DISTRICT

- 12.1. The District shall examine the documents submitted by the Engineer and shall render any decision(s) required of District, in a timely manner to avoid unreasonable delay in the performance of Engineer's Services.
- 12.2. The District shall verbally or in writing advise the Engineer if the District becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Engineer's documents. Failure to provide such notice shall not relieve Engineer of its responsibility therefore, if any.
- 12.3. Unless the District and the Engineer agree that a hazardous materials consultant shall be a Consultant of the Engineer, the District shall furnish the services of a hazardous material consultant or other consultants when such services are requested in writing by Engineer and deemed necessary by the District or are requested by the District. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to these matters which are to be incorporated into bid documents prepared by Engineer. If the hazardous materials consultant is furnished by the District and is not a Consultant of the Engineer, the specifications shall indicate that the specifications prepared by District's consultant relating to these matters, are included in the Engineer's bid documents for the District's convenience and have not been prepared or reviewed by the Engineer. The bid documents shall also direct questions about the specifications to the consultant that prepared the specifications.
- 12.4. District personnel and/or its designated representatives shall coordinate with Engineer as may be requested and beneficial for the coordination or management of work related to the Project.
- 12.5. The District shall timely provide to the Engineer all relevant information in its possession regarding the Project that is necessary for performance of Engineer's Services.

Article 13. LIABILITY OF DISTRICT

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

- 13.2. District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Engineer, or by its employees and Consultants, even though such equipment may be furnished or loaned to Engineer by District.

Article 14. NONDISCRIMINATION

- 14.1. Engineer agrees that no discrimination shall be made in the employment of persons under this Agreement because of the race, national origin, ancestry, religion, age, physical or mental disability, sex, or sexual orientation of such person.
- 14.2. Engineer shall comply with any and all applicable regulations and laws governing nondiscrimination in employment.

Article 15. INSURANCE

- 15.1. Engineer shall comply with the insurance requirements for this Agreement, set forth in Exhibit "E."
- 15.2. Engineer shall provide certificates of insurance and endorsements to District prior to commencement of the work of this Agreement as required in Exhibit "E."

Article 16. COVENANT AGAINST CONTINGENT FEES

Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Engineer, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the Fee or consideration or to recover the full amount of such fee, commission, percentage fee, gift, or contingency.

Article 17. ENTIRE AGREEMENT/MODIFICATION

This Agreement, including the Exhibits incorporated by reference into this Agreement, supersedes all previous contracts and constitutes the entire understanding of the Parties hereto. Engineer shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both Parties. Engineer specifically acknowledges that in entering this Agreement, Engineer relies solely upon the provisions contained in this Agreement.

Article 18. NON-ASSIGNMENT OF AGREEMENT

This Agreement is intended to secure the specialized Services of the Engineer; therefore, Engineer may not assign, transfer, delegate or sublet any interest therein without the prior written consent of District and any such assignment, transfer, delegation or sublease without the District's prior written consent shall be considered null and void. Likewise, District may not assign, transfer, delegate or sublet any interest therein without the prior written consent of Engineer and any such assignment, transfer, delegation or sublease without Engineer's prior written consent shall be considered null and void.

Article 19. LAW, VENUE

- 19.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.
- 19.2. The county in which the District administration office is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

Article 20. ALTERNATIVE DISPUTE RESOLUTION

20.1. Engineer's Invoices.

- 20.1.1. If the District disapproves of any portion or amount(s) of the Engineer's invoices, the District shall within thirty (30) days of receipt by the District of any of the Engineer's invoices, communicate to the Engineer in writing, with reasonable detail, the portion or amount of the Engineer's invoices that are disapproved for payment, the portion or amount of the Engineer's invoices that are approved for payment, and the basis for the District's disapproval of the disputed portion(s) or amount(s) of the Engineer's invoices ("Disputed Engineer Invoice Detail").
- 20.1.2. If the Engineer disagrees with the Disputed Engineer Invoice Detail, the Engineer shall communicate to the District in writing, and request to meet and confer in good faith with respect to the Disputed Engineer Invoice Detail, to determine if the disagreement can be resolved. The meet and confer shall be scheduled to occur within thirty (30) days of Engineer's request. The meet and confer shall include, but are not limited to, face-to-face meeting(s) with the appropriate District and Engineer personnel as appropriate and necessary.
- 20.1.3. If the Parties cannot resolve the matter during this meet and confer process, the Parties shall handle the matter as a "dispute" as provided herein.

20.2. Disputes between the parties arising out of this Agreement shall be resolved by the following processes:

- 20.2.1. **Negotiation.** The parties shall first attempt in good faith to resolve any dispute arising out of or relating to this Agreement by negotiation. The Parties' meet and confer process for Disputed Engineer Invoice Detail as detailed above, shall satisfy this negotiation requirement.
- 20.2.2. **Mediation.** Within thirty (30) days, but no earlier than fifteen (15) days, following the earlier of receipt of notice by one Party from the other Party of a demand for mediation, the Parties shall submit the dispute to non-binding mediation administered by the AAA (or other agreed upon rules) under its construction industry mediation rules, unless waived by mutual stipulation of both Parties.
- 20.2.3. **Litigation.** Disputes arising from this Agreement that cannot be settled through negotiation or mediation (after those processes have been exhausted) shall be litigated in the California Superior Court in the county in which the Project that is the subject of this Agreement is located.

- 20.3. Engineer shall neither rescind nor stop the performance of its Services pending the outcome of any dispute.

Article 21. SEVERABILITY

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

Article 22. EMPLOYMENT STATUS

- 22.1. Engineer shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which the Engineer performs the Services; provided always, however, that the Services to be provided by Engineer shall be provided in a manner consistent with all applicable standards and regulations governing such Services.
- 22.2. Engineer understands and agrees that the Engineer's personnel are not and will not be eligible for membership in or any benefits from any District group plan for hospital, surgical or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a District employee.
- 22.3. Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Engineer is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Engineer which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 22.4. Should a relevant taxing authority determine a liability for Services performed by Engineer for District, upon notification of such fact by District, Engineer shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Engineer under this Agreement (again, offsetting any amounts already paid by Engineer which can be applied as a credit against such liability).
- 22.5. A determination of employment status pursuant to the preceding two (2) paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Engineer shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Engineer is an employee for any other purpose, then Engineer agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Engineer was not an employee.
- 22.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 23. WARRANTY AND CERTIFICATION OF ENGINEER

- 23.1. Engineer warrants and certifies that the Engineer is properly certified and licensed under the laws and regulations of the State of California to provide the Services that it has agreed to perform.
- 23.2. Engineer warrants and certifies that it is aware of the provisions of the California Labor Code that 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 it certifies that it will comply with those provisions before commencing the performance of the Services.
- 23.3. Engineer warrants and certifies that it is aware of the provisions of California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects (“Prevailing Wage Laws”). Since the Engineer is performing Services as part of an applicable “public works” or “maintenance” project, and since the total compensation is One Thousand Dollars (\$1,000) or more, the Engineer agrees to fully comply with and to require its Consultant(s) to fully comply with all applicable Prevailing Wage Laws.

Article 24. COST DISCLOSURE - DOCUMENTS AND WRITTEN REPORTS

Engineer shall be responsible for compliance with California Government Code section 7550, if the total cost of the Agreement exceeds Five Thousand Dollars (\$5,000).

Article 25. NOTICES AND COMMUNICATIONS

Notices and communications between the Parties to this Agreement may be sent to the following addresses:

District:

San José Unified School District
Maintenance Office
2222 Unified Way, San José, CA 95125
Attn: Director of Procurement
E-Mail: tmorrison@sjusd.org

Engineer:

Pavement Engineering Inc.
3485 Sacramento Drive, Suite A
San Luis Obispo, CA 93401
Attn: William J. Long
E-Mail: billl@pavementengineering.com

Any notice personally given shall be effective upon receipt. Any notice sent by facsimile or e-mail shall be effective the day after receipt. Any notice sent by overnight delivery service shall be effective the day after delivery. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

Article 26. DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION

Pursuant to section 17076.11 of the Education Code, the District has a participation goal for disabled veteran business enterprises (DVBEs) of at least three (3) percent, per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the “Act”). This Project may use funds allocated under the Act. Therefore, to the extent feasible and pertaining to future hirings, the Engineer, before it executes the Agreement, shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBEs in conjunction with the Agreement, and documentation demonstrating the Engineer’s good faith efforts to meet these DVBE goals.

Article 27. DISTRICT’S RIGHT TO AUDIT

- 27.1. District retains the right to review and audit, and the reasonable right of access to Engineer’s and any Consultant’s premises to review and audit the Engineer’s compliance with the provisions of this Agreement (“District’s Audit Right”). The District’s Audit Right includes the right to inspect, photocopy, and to retain copies, outside of the Engineer’s premises, of any and all Project-related records, documents and other information with appropriate safeguards, if such retention is deemed necessary by the District in its sole discretion. The District shall keep this information confidential, as allowed by applicable law.
- 27.2. The District’s Audit Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the District determines are necessary to discover and verify that the Engineer is in compliance with the requirements of this Agreement.
- 27.3. If there is a claim for additional compensation or for Extra Services, the District’s Audit Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the District determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.
- 27.4. The Engineer shall maintain complete and accurate records for a minimum of seven (7) years and in accordance with generally accepted accounting practices in the industry. The Engineer shall make available to the District for review and audit, all Project related accounting records and documents, and any other financial data. Upon District’s request, the Engineer shall submit exact duplicates of originals of all requested records to the District.
- 27.5. The Engineer shall include audit provisions in any and all of its subcontracts, and shall ensure that this Article is binding upon all Consultants.
- 27.6. Engineer shall comply with these provisions within fifteen (15) days of the District’s written request to review and audit any or all of Engineer’s Project-related documents, records and information.
- 27.7. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of more than Ten Thousand Dollars (\$10,000), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of the District, or as part of any audit of the District, for a period of three (3) years after final payment under the Agreement.

Article 28. OTHER PROVISIONS

- 28.1. Neither the District’s review, approval of, nor payment for, any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Engineer shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Engineer’s failure to perform any of the Services to the standard of care of the Engineer for its Services, which shall be, at a minimum, the standard of care of Engineers performing similar work for California school districts in or around the same geographic area of the District.
- 28.2. Each Party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each Party acknowledges that the drafting of this Agreement was the product of negotiation, that no Party is the author of this Agreement, and that this Agreement shall not be construed against any Party as the drafter of the Agreement.

- 28.3. The Engineer shall issue a credit to the District as an offset to the Engineer’s Fee equal to one hundred percent (100%) of the tax deduction and/or credit the Engineer receives based on the Project per Internal Revenue Code Section 179(D).
- 28.4. The Engineer acknowledges that the District is a public agency that is subject to heightened curiosity by the news media and the public and that the Engineer may not be apprised of all facts surrounding the Project that Engineer is working on. Accordingly, Engineer shall promptly refer all inquiries from the news media or public concerning this Agreement or its performance under the Agreement to the District, and Engineer shall not make any statements or disclose any documents to the media or the public relating to the performance under this Agreement or the effects caused thereby. If Engineer receives a complaint from a citizen or member of the public concerning the performance or effects of this Agreement, it shall promptly inform the District of that complaint. In its sole discretion, the District shall determine the appropriate response to the complaint.
- 28.5. **Confidentiality.** Engineer, and its Consultants, and employee(s) shall maintain the confidentiality of all information received in the course of performing the Services. Engineer 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.
- 28.6. **Exhibits A through E** and all Certificates attached hereto are hereby incorporated by this reference and made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the later date indicated below:

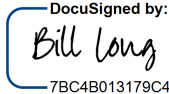
Dated:

Dated: 10/30/2024

San José Unified School District

Pavement Engineering, Inc.

By:

By:  7BC4B013179C44F...

Name: Tracy Morrison

Name: William J. Long

Title: Director - Procurement

Title: CEO



EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF ENGINEER

TABLE OF CONTENTS

1.	PROJECT DESCRIPTION	2
2.	BASIC SERVICES	3
3.	PRE-DESIGN AND START-UP SERVICES	4
4.	CONSTRUCTION DOCUMENTS PHASE	6
5.	BIDDING PHASE	12
6.	CONSTRUCTION ADMINISTRATION PHASE	13
7.	CLOSEOUT PHASE	16
8.	MEETINGS / SITE VISITS / WORKSHOPS	17

Engineer shall provide all professional services necessary for completing the following Project:

1. PROJECT DESCRIPTION

- 1.1. Project scope of work includes but is not limited to:
 - 1.1.1. Removing damaged portions of concrete and asphalt
 - 1.1.2. Adding lime treatment where needed
 - 1.1.3. Adding overlays to correct drainage or access issues
 - 1.1.4. Slurry sealing all asphalt
 - 1.1.5. Restriping all asphalt
 - 1.1.6. Appropriate surface coating for the sites at:
 - 1.1.6.1 Brett Harte Middle School: 7050 Bret Harte Dr., San José, CA 95120
 - 1.1.6.1.1 Localized site work between M and F wing for drainage control
 - 1.1.6.1. Willow Glen Middle School: 2105 Cottle Avenue, San José, CA 95125
 - 1.1.6.1.1. Parking lot repair and seal
 - 1.1.6.2. Willow Glen High School: 2001 Cottle Ave, San José, CA 95125
 - 1.1.6.2.1. Parking lot repair and seal
 - 1.1.6.3. District Operations and Warehouse: 2105 Cottle Avenue, San José, CA 95125
 - 1.1.6.3.1. Parking lot repair and seal
 - 1.1.6.4. Williams Elementary School: 1150 Rajkovich Way, San José, CA 95120
 - 1.1.6.4.1. Parking lot repair and seal
 - 1.1.6.5. San José High School Annex: 275 N 24th St, San José, CA 95116
 - 1.1.6.5.1. Parking lot repair and seal
- 1.2. The project will be packaged into three (3) general bid packages, not phased nor incremental: (1) Bret Harte Middle School; (1) Willow Glen Middle School and High School and District Operations and Warehouse; and (1) Williams Elementary School and San José High School Annex.
- 1.3. The district will provide all information available for each of these sites (prior plans, reports, soft files, etc.). If additional work is required of the Engineer, the Parties will negotiate the terms.
- 1.4. District will engage the service of a Construction Manager to provide Construction Management services from preconstruction through project close out.
- 1.5. The estimated construction (hard) cost of this project is \$2.94 Million.

2. BASIC SERVICES

Engineer agrees to provide the services described below:

- 2.1. Engineer shall be responsible for the professional quality and technical accuracy of all studies, reports, projections, master plans, designs, drawings, specifications and other services furnished by Engineer under the Agreement as well as coordination with all Master plans, studies, reports and other information provided by District. Engineer shall, without additional compensation, correct or revise any errors or omissions in its studies, reports, projections, master plans, design, drawings, specifications and other services.
- 2.2. The District shall provide all information available to it to the extent the information relates to Engineer's scope of work. This information shall include, if available;
 - 2.2.1. Physical characteristics;
 - 2.2.2. Legal limitations and utility locations for the Project site(s);
 - 2.2.3. Written legal description(s) of the Project site(s);
 - 2.2.4. Grades and lines of streets, alleys, pavements, and adjoining property and structures;
 - 2.2.5. Adjacent drainage;
 - 2.2.6. Rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries and contours of the Project site(s);
 - 2.2.7. Locations, dimensions and necessary data with respect to existing buildings, other improvements and trees;
 - 2.2.8. Information concerning available utility services and lines, mechanical and other services, both public and private, above and below grade, including inverts and depths;
 - 2.2.9. Surveys, reports, as-built drawings; and
 - 2.2.10. Subsoil data, chemical data, and other data logs of borings.

Engineer shall Visually Verify this information and all existing utilities related to the Project, including capacity, and document the location of existing utility lines, telephone, water, sewage, storm drains and other lines on or around the Project to the extent determinable by the documents provided by the District.

If Engineer determines that the information or documentation the District provides is insufficient for purposes of design or if the Engineer requires a topographical survey; geotechnical report; structural, mechanical, and/or chemical tests; tests for air and/or water pollution; test borings; test pits; determinations of soil bearing values; percolation tests; ground corrosion tests; resistivity tests; tests for hazardous materials; tests for anticipating subsoil conditions; and/or other information that the District has not provided, the Engineer shall request that the District acquire that information at the soonest possible time after Engineer becomes aware that this additional information is needed. If the Parties mutually agree, this additional information and service shall be procured through the Engineer, who may invoice the District for those services as Extra Services.

- 2.3. **Technology Backbone (if applicable).** Engineer shall be responsible for the coordination of the design and the layout of the technology backbone system with the District’s Information Technology Department and/or the District’s technology consultant, and lay out any included technology backbone system. The coordination effort shall include location and routing of raceways, conduits and outlets and the required spaces to accommodate electrical, data and communication wiring. Engineer and consultant(s) shall prepare and be responsible for documents prepared by the Engineer based on the information provided by the District’s technology consultant as appropriate to the level of design completion.
- 2.4. **Interior Design (if applicable).** Provide interior design and other similar services required for or in connection with selection and color coordination of materials. Engineer is required to coordinate the placement of furniture, equipment layout, or schematic space allocation. The District shall procure furnishings and moveable equipment. Advise the District on lead times and availability of all Project equipment, materials, supplies, and furnishings to ensure that all of these will be available to the District in a timely fashion so as to not delay the Project and/or delay the District’s beneficial occupancy of the Project.

2.5. **Mandatory Assistance**

If a third-party dispute or litigation, or both, arises out of, or relates in any way to the Services provided under this Agreement, upon the District's request, the Engineer, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Engineer's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation (“Mandatory Assistance”).

The District will compensate the Engineer for fees incurred for providing Mandatory Assistance as Extra Services under Exhibit B. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third-party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of the Engineer, its agents, officers, and employees, the Engineer shall reimburse the District. The District is then entitled to reimbursement of all fees paid to the Engineer, its agents, officers, and employees for Mandatory Assistance.

3. PRE-DESIGN AND START-UP SERVICES

3.1. **Project Initiation**

Upon final execution of the Agreement with the District, the Engineer shall:

- 3.1.1. Within the first week following execution of the Agreement, review the proposed Schedule of Work set forth in Exhibit “C” to the Agreement and prepare a detailed scope of work list and work plan for documentation in a computer-generated Project schedule to the District’s satisfaction. This scope of work list and work plan will identify specific tasks including, but not limited to: interviews, data collection, analysis, report preparation, planning, Engineering programming, concepts and schematic design preparation and estimating that are part of the work of the Project. Engineer shall also identify milestone activities or dates, specific task responsibilities, required completion times necessary for the review and approval by the District and by all regulatory agencies and additional definition of deliverables.
- 3.1.2. Review the developed work plan with the District and its representatives to familiarize them with the proposed tasks and schedule and develop necessary modifications.

3.2. Development of Engineering Program

The Engineer shall prepare for the District's review an engineering program as follows:

- 3.2.1. Perform pre-design investigations to establish appropriate guidelines around which and within which the Project is to be designed. Identify design issues relating to functional needs, directives and constraints imposed by regulatory codes. Review all data pertinent to the Project including survey, site maps, geotechnical reports and recommendations, soil testing results reports, and pertinent historical data, and other relevant information provided by District.
- 3.2.2. Review Uniform Building Code and the California Code of Regulations, Title 24, pertaining to the proposed Project design.
- 3.2.3. Identify design issues relating to functional needs, directives and constraints imposed by applicable regulatory codes.
- 3.2.4. Based on survey and topography data provided by the District, input into computer and develop existing conditions base for the Schematic Design Phase.
- 3.2.5. Administer Project as required to coordinate work with the District and between sub consultants.
- 3.2.6. Construction Cost Budget
 - 3.2.6.1. Engineer shall have responsibility to further develop review, and reconcile the Construction Cost Budget within the parameters of the Construction Budget established in the District's implementation plan. The estimates forming the basis of the Construction Cost Budget are to be based on the developed functional Engineering programs as approved by the District. The following conditions apply to the Construction Cost Budget prepared by the Engineer:
 - 3.2.6.1.1. All costs are to be based on current bid prices, with escalation rate and duration clearly identified as a separate line item; rate of cost escalation and projected bid and construction dates are to be as approved by the District and its representatives.
 - 3.2.6.1.2. Format shall be in a building systems format (e.g., foundations, substructure, structural system, exterior wall enclosure, window systems, etc.) for new buildings, and summarized by the Construction Specification Institute (CSI) category for buildings being modernized.
 - 3.2.6.1.3. Contingencies for design, bidding, and construction are to be included as individual line items, with the percentage and base of calculation clearly identified.
 - 3.2.6.1.4. The Engineer shall include all information and estimates from the District and/or the Construction Manager that are intended to be part of the Construction Cost Budget.

3.2.6.1.5. One week prior to submittal of documents, the Engineer shall submit its proposed Construction Cost Budget to the District and the Construction Manager for review and approval. At that time, the Engineer shall coordinate with the District and the Construction Manager to further develop, review, and reconcile the Construction Cost Budget.

3.2.6.1.6. Mechanical, electrical, civil, landscape and estimating consultant(s) shall participate in the progress meeting as appropriate and shall provide input and feedback into the development of the Construction Cost Budget.

3.2.6.2. The Construction Cost Budget for the Project must at no point exceed the District's Construction Budget. The accuracy of the Construction Cost Budget shall be the responsibility of the Engineer.

3.3. Presentation

Engineer along with any involved consultant(s) shall present and review with the District and, if directed, with it's the District's governing board, the summary and detail of work involved in this Phase, including two dimensional renderings of any proposed facility suitable for public presentation.

3.4. Deliverables and Numbers of Copies

Engineer shall provide to the District a hard copy of the following items produced in this Phase, together with one copy of each item in electronic format:

- 3.4.1. Engineering Program (Include comparison between developed program and "model" program, include narrative explaining any substantial deviations);
- 3.4.2. Site Plan;
- 3.4.3. Revised Construction Cost Budget;
- 3.4.4. Final Schedule of Work;
- 3.4.5. Meeting Reports/Minutes from Kick-off and other meetings;
- 3.4.6. Renderings provided to District for public presentation.

3.5. Meetings

During this Phase, Engineer shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops as indicated below.

4. CONSTRUCTION DOCUMENTS PHASE

Upon District's acceptance of Engineer's work in the previous Phase and assuming District has not delayed or terminated the Agreement, the Engineer shall prepare from the accepted deliverables from the Design Development Phase the Construction Documents consisting of the following for each proposed system within Engineer's scope of work:

4.1. Construction Documents (“CD”) 50% Stage:

4.1.1. General

Verify lead times and availability of all Project equipment, materials, supplies, and furnishings and ensure that all of these will be available to the contractor(s) in a timely fashion so as to not delay the Project and/or delay the District’s beneficial occupancy of the Project. The Engineer shall also provide other options to the District regarding other possible and more available equipment, materials, supplies, or furnishings.

4.1.2. Engineering

4.1.2.1. Site plan developed to show building location, and major site elements.

4.1.2.2. Elevations (exterior and interior), sections and floor plans corrected to reflect design development review comments.

4.1.2.3. Engineering details and large blow-ups started.

4.1.2.4. Well-developed finish, door, and hardware schedules.

4.1.2.5. Fixed equipment details and identification started.

4.1.2.6. Reflected ceiling plans coordinated with floor plans and mechanical and electrical systems.

4.1.3. Structural

4.1.3.1. Structural floor plans and sections with detailing well advanced.

4.1.3.2. Structural footing and foundation plans, floor and roof framing plans with detailing well advanced.

4.1.3.3. Completed cover sheet with general notes, symbols and legends.

4.1.4. Mechanical (if applicable)

4.1.4.1. Mechanical calculations virtually completed with all piping and ductwork sized.

4.1.4.2. Large scale mechanical details started.

4.1.4.3. Mechanical schedule for equipment substantially developed.

4.1.4.4. Complete design of Emergency Management System (“EMS”).”

4.1.5. Electrical (if applicable)

4.1.5.1. Lighting, power, signal and communication plans showing all switching and controls. Fixture schedule and lighting details development started.

4.1.5.2. Distribution information on all power consuming equipment; lighting and device branch wiring development well started.

4.1.5.3. All electrical equipment schedules started.

4.1.5.4. Special system components approximately located on plans.

4.1.5.5. Complete design of low voltage system. Low voltage system includes fire alarm system, security system, clock and public-address system, voice data system, and telecom/technology system.

4.1.6. Civil (if applicable)

4.1.6.1. All site plans, site utilities, parking, walkway, and roadway systems updated to reflect update revisions from Design Development Phase Documents, including all topographical and major site elements and existing/proposed contour lines.

4.1.6.2. Site utility plans started.

4.1.7. Landscape (if applicable)

All landscape, hardscape, and irrigation plans updated to reflect update revisions from Design Development Phase Documents.

4.1.8. Construction Cost Budget

4.1.8.1. Revise the Construction Cost Budget for the Project. Along with the conditions identified in the preceding phases, Engineer shall update and refine the Design Development Phase revisions to the Construction Cost Budget. Engineer shall provide a Construction Cost Budget sorted by the Project Bid Packages.

4.1.8.2. The Construction Cost Budget for the Project must at no point exceed the District's Construction Budget. The accuracy of the Construction Cost Budget shall be the responsibility of the Engineer.

4.1.8.3. The Engineer shall submit its proposed Construction Cost Budget to the District and the Construction Manager for review and approval. At that time, the Engineer shall coordinate with the District and the Construction Manager to further develop, review, and reconcile the Construction Cost Budget.

4.1.8.4. At this stage of the design, the Construction Cost Budget may include design contingencies of no more than 5% in the cost estimates.

4.1.9. Specifications

More than fifty percent (50%) complete development and preparation of technical specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.

4.1.9.1. No part of the specifications shall call for a designated material, product, thing, or service by specific brand or trade name unless:

4.1.9.1.1. The specification is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service, as required by Public Contract Code, section 3400, or

4.1.9.1.2. The designation is allowable by a specific allowable exemption or exception pursuant to Public Contract Code, section 3400

4.1.9.2. Specifications shall not contain restrictions that will limit competitive bids other than those required for maintenance convenience by the District and only with District's prior approval.

4.1.9.3. Specifications shall be in CSI format.

4.1.10. Deliverables and Numbers of Copies

Engineer shall provide to the District a hard copy of the following items produced in this phase, together with one copy of each item in electronic format:

4.1.10.1. Working drawings;

4.1.10.2. Specifications;

4.1.10.3. Statement of requirements for testing and inspection of service for compliance with Construction Documents and applicable codes;

4.1.10.4. Statement indicating any authorized changes made to the design from the last Phase and the cost impact of each change on the previously approved Construction Cost Budget. If no design changes occur but shifts of costs occur between disciplines, identify for District review.

4.2. **Construction Documents – 100% / Completion Stage:**

4.2.1. Engineering

4.2.1.1. Completed site plan.

4.2.1.2. Completed floor plans, elevations, and sections.

4.2.1.3. Engineering details and large blow-ups completed.

4.2.1.4. Finish, door, and hardware schedules completed, including all details.

4.2.1.5. Fixed equipment details and identification completed.

4.2.1.6. Reflected ceiling plans completed.

4.2.2. Structural

4.2.2.1. Structural floor plans and sections with detailing completed.

4.2.2.2. Structural calculations completed.

4.2.3. Mechanical (if applicable)

- 4.2.3.1. Large scale mechanical details complete.
- 4.2.3.2. Mechanical schedules for equipment completed.
- 4.2.3.3. Completed electrical schematic for environmental cooling and exhaust equipment.
- 4.2.3.4. Complete energy conservation calculations and report.
- 4.2.4. Electrical (if applicable)
 - 4.2.4.1. Lighting and power plan showing all switching and controls. Fixture schedule and lighting details completed.
 - 4.2.4.2. Distribution information on all power consuming equipment, including lighting, power, signal and communication device(s) branch wiring completed.
 - 4.2.4.3. All electrical equipment schedules completed.
 - 4.2.4.4. Special system components plans completed.
 - 4.2.4.5. Electrical load calculations completed.
- 4.2.5. Civil (if applicable)

All site plans, site utilities, parking and roadway systems completed.
- 4.2.6. Construction Cost Budget
 - 4.2.6.1. Revise the Construction Cost Budget for the Project. Along with the conditions identified in the preceding phases, Engineer shall update and refine the 50% Construction Documents Phase revisions to the Construction Cost Budget.
 - 4.2.6.2. The Construction Cost Budget for the Project must at no point exceed the District's Construction Budget. The accuracy of the Construction Cost Budget shall be the responsibility of the Engineer.
 - 4.2.6.3. The Engineer shall submit its proposed Construction Cost Budget to the District and the Construction Manager for review and approval. At that time, the Engineer shall coordinate with the District and the Construction Manager to further develop, review, and reconcile the Construction Cost Budget.
 - 4.2.6.4. At this stage of the design, the Construction Cost Budget shall not include any design contingencies in excess of the cost estimates.

4.2.7. Specifications

4.2.7.1. Complete development and preparation of technical specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.

4.2.7.2. No part of the specifications shall call for a designated material, product, thing, or service by specific brand or trade name unless:

4.2.7.2.1. The specification is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service, as required by Public Contract Code, section 3400; or

4.2.7.2.2. The designation is allowable by specific allowable exemptions or exceptions pursuant to Public Contract Code, section 3400.

4.2.7.3. Specifications shall not contain restrictions that will limit competitive bids other those required for maintenance convenience by the District and only with District's prior approval.

4.2.7.4. At one hundred percent (100%) review, District shall review the specifications and shall direct Engineer to make corrections at no cost to the District.

4.2.7.5. Coordination of the Specifications with specifications developed by other disciplines.

4.2.7.6. Specifications shall be in CSI format.

4.2.8. Constructability Review

The District and/or its designee shall conduct a construction review of the Construction Documents. A report shall be given to the Engineer who shall make necessary changes along with providing written comments for each item listed in the report.

4.2.9. Deliverables and Numbers of Copies

Engineer shall provide to the District a hard copy of the following items produced in this phase, together with one copy of each item in electronic format:

4.2.9.1. Reproducible copies of working drawings;

4.2.9.2. Specifications;

4.2.9.3. Engineering calculations;

4.2.9.4. Revised Construction Cost Budgets;

4.2.9.5. Statement of requirements for testing and inspection of service for compliance with Construction Documents and applicable codes; and

- 4.2.9.6. Statement indicating any authorized changes made to the design from the last Phase and the cost impact of each change on the previously approved Construction Cost Budget. If no design changes occur but shifts of costs occur between disciplines, identify for District review.

4.3. Construction Documents (CD) Final Back-Check Stage

The Construction Documents final back-check stage shall be for the purpose of the Engineer incorporating all regulatory agencies' comments into the drawings, specifications, and estimate. All changes made by the Engineer during this stage shall be at no additional cost to the District.

- 4.3.1. **Approval of Construction Documents.** Engineer shall obtain all necessary approvals for the Construction Documents for the Project from governmental agencies with jurisdiction therefor as necessary for the bidding and construction of the Work depicted in the Construction Documents. Engineer shall revise the Construction Documents as required governmental agencies to obtain their respective approvals of the Construction Documents. Except for the Engineer's fees (which are included in the Contract Price for Basic Services) incurred in obtaining the approvals or preparing revisions pursuant to the foregoing, the District shall pay all other costs or fees necessary for obtaining the approvals.
- 4.3.2. The final contract documents delivered to the District upon completion of the Engineer's work shall be the Bid Set and shall consist of the following:
 - 4.3.2.1. Drawings: Original tracings of all drawings on Engineer's tracing paper with each Engineer/consultant's State license stamp.
 - 4.3.2.2. Specifications: Original word-processed technical specifications on reproducible masters in CSI format.
- 4.3.3. Engineer shall update and refine the consultants' completed Construction Documents.

4.4. Meetings

During this Phase, Engineer shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops as indicated below.

5. BIDDING PHASE

Upon District's acceptance of Engineer's work in the previous Phase and assuming District has not delayed or terminated the Agreement, the Engineer shall perform Bidding Phase services for District as follows:

- 5.1. Contact potential bidders and encourage their participation in the Project.
- 5.2. Coordinate the development of the bidding procedures and the construction contract documents with the District.
- 5.3. The development of the bidding procedures and the construction contract documents shall be the joint responsibility of the District and the Engineer.
- 5.4. While the Project is being advertised for bids, all questions concerning intent shall be referred to the District for screening and subsequent processing through Engineer.

- 5.5. In the event that items requiring interpretation of the drawings or specifications are discovered during the bidding period, those items shall be analyzed by the Engineer for decision by the District as to the proper procedure required. Corrective action will be in the form of an addendum prepared by the Engineer and issued by the District.
- 5.6. Attend bid opening.
- 5.7. Coordinate with sub consultants.
- 5.8. Respond to District questions and clarifications.
- 5.9. Deliverables and Number of Copies

Engineer shall provide to the District a hard copy of the following items produced in this phase, together with one copy of each item in electronic format:

- 5.9.1. Meeting report/minutes from kick-off meeting;
- 5.9.2. Meeting report/minutes from pre-bid site walk(s);
- 5.9.3. Upon completion of the Bidding Phase, Engineer shall produce a Conforming Set of plans and specifications incorporating all addenda issued thus far for construction purposes. Engineer shall supply District with two (2) complete, reproducible sets of plans and specifications marked as a Conforming Set, and one (1) electronic set of plans in AutoCAD 2006 or compatible set and one (1) electronic copy of the conforming specifications in Microsoft Word.

6. CONSTRUCTION ADMINISTRATION PHASE

Upon District's acceptance of Engineer's work in the previous Phase and assuming District has not delayed or terminated the Agreement, the Engineer shall perform Construction Administration Phase services for the District as follows:

- 6.1. The Engineer's responsibility to provide basic services for the Construction Phase under the Agreement commences with the award of the contract for construction and terminates upon satisfactory performance and completion of all tasks in this phase and commencement of the Closeout Phase or upon the District's terminating the Agreement, whichever is earlier.
- 6.2. The Engineer shall provide an inspector to observe all construction activities and provide field testing for the pavement and soils portions of the work. Testing services include the field and laboratory testing necessary to assure that the Contractor is providing the required quality of workmanship and materials during construction. Field testing involves performing field density tests on soils, aggregates and asphalt concrete using a nuclear density gauge. Laboratory tests include determination of maximum density and optimum moisture content for soils and aggregates and maximum compacted unit weight, maximum theoretical unit weight, stability, air voids and core unit weights for asphalt concrete.

6.3. Change Orders

- 6.3.1. Engineer shall review all of contractor's change order requests to determine if those requests are valid and appropriate. Engineer shall provide a recommendation to District as to whether the change should be approved, partially approved, returned to the contractor for clarification, or rejected.
- 6.3.2. The Engineer shall furnish all necessary additional drawings for supplementing, clarifying, and/or correcting purposes and for change orders. The District shall request these drawings from the Engineer and shall be at no additional cost unless designated as Extra Services by the District. The original tracing(s) and/or drawings and contract wording for change orders shall be submitted to the District for duplication and distribution.

6.4. Submittals

- 6.4.1. Engineer shall review and approve or take other appropriate action upon contractor's submittals such as: shop drawings, project data, samples and change orders, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the contract documents.
- 6.4.2. Engineer shall review contractor's schedule of submittals and advise the District on the whether that schedule is complete. The Engineer shall provide the District with proposed revisions to this schedule and advise the District on whether the District should approve this schedule.
- 6.4.3. The Engineer's action upon contractor's submittals shall be taken as expeditiously as possible so as to cause no unreasonable delay in the construction of the Project or in the work of separate contractors, while allowing sufficient time in the Engineer's professional judgment to permit adequate review. In no case shall the review period associated with a single, particular submittal exceed twenty-one (21) calendar days from its receipt by the Engineer. Engineer's response to each submittal shall be a substantive and acceptable response. This 21-day time period shall not include time when a submittal is within the District's control or if the submittal is being reviewed by governmental agencies with jurisdiction. In no way does this provision reduce the Engineer's liability if it fails to prepare acceptable documents.

6.5. RFIs

During the course of construction, all Requests for Information ("RFI") must be responded to as expeditiously as possible so as not to impact and delay the construction progress. In no case shall the review period associated with an RFI exceed seven (7) calendar days from the receipt by the Engineer. Engineer's response to each RFI shall be a substantive and acceptable response. This 7-day time period shall not include time when a submittal is within the District's control or if the submittal is being reviewed by governmental agencies with jurisdiction. In no way does this provision reduce the Engineer's liability if it fails to prepare acceptable documents.

- 6.6. On the basis of on-site observations, the Engineer shall keep the District informed of the progress and the quality of the work, and shall endeavor to guard the District against defects and deficiencies in the work. Engineer shall notify the District in writing of any defects or deficiencies in the work by any of the District's contractors that the Engineer may observe. However, the Engineer shall not be a guarantor of the contractor's performance.
- 6.7. **As-Built Drawings.** Engineer shall review and evaluate for District, the contractor(s)' documentation of the actual construction performed during the Project that the contractor(s) should prepare and submit as As-Built. As-Built are documents that show the actual construction performed during the Project, including changes necessitated by change orders, and detailed by the District's construction contractor(s) on a Conforming Set.
- 6.7.1. Engineer shall provide to contractor(s), electronic "background" copies of all plans on which the contractor(s) shall indicate its "As-Built" in electronic format back to the District.
- 6.8. **Record Drawings.** Only if requested specifically by the District, Engineer shall incorporate all information on all As-Built, sketches, details, and clarifications, and prepare one set of final Record Drawings for the District. The Record Drawings shall incorporate onto one set of electronic drawings, all changes from all As-Built, sketches, details, and clarifications. If a set of Record Drawings has been requested by the District, then (1) the Engineer shall deliver it to the District at completion of the construction and (2) it shall be a condition precedent to the District's approval of the Engineer's final payment. The Engineer may insert the following notice on the Record Drawings:
- These drawings [or corrected specifications] have been prepared based on information submitted, in part, by others. The Engineer has provided a review consistent with its legal standard of care.
- 6.10. **O&M Manuals / Warranties.** Engineer shall review equipment, operation and maintenance manuals, and a complete set of warranty documents for all equipment and installed systems, to ensure that they meet the requirements of the plans and specifications.
- 6.11. Engineer shall also provide, at the District's request, Engineering/engineering advice to the District on start-up, break-in, and debugging of facility systems and equipment, and apparent deficiencies in construction following the acceptance of the contractor's work.
- 6.12. Recommendations of Payment by Engineer constitute Engineer's representation to the District that work has progressed to the point indicated to the best of Engineer's knowledge, information, and belief, and that the quality of the work is in general conformance with the contract documents.
- 6.13. **Deliverables and Number of Copies**
- Engineer shall provide to the District a hard copy of the following items produced in this phase, together with one copy of each item in electronic format:
- 6.13.1. Meeting report/minutes from kick-off meeting;
- 6.13.2. Observation reports;

6.13.3. Meeting reports.

6.14. **Meetings**

During this phase, Engineer shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops as indicated below.

7. CLOSEOUT PHASE

7.1. As the Construction Administration Phase progresses, the Engineer shall perform the following Close Out Phase services for the District as required:

7.1.1. Engineer shall review the project and observe the construction as required to determine when the contractor has completed the construction of the Project and shall prepare punch lists of items that remain in need of correction or completion.

7.1.2. Engineer shall collect from the contractor, review, and forward to the District all written warranties, operation manuals, spare parts, lien waivers, and Certificates of Inspection and Occupancy with Engineer's recommendation as to the adequacy of these items.

7.1.3. Engineer shall prepare a set of Record Drawings for the Project, as requested by the District.

7.1.4. Engineer shall review and prepare a package of all warranty and M&O documentation.

7.1.5. Engineer shall organize electronic files, plans and prepare a Project binder.

7.1.6. Engineer shall coordinate all Services required to close-out the design and construction of the Project with the District and between consultants.

7.2. When the design and construction of the Project is complete, the District shall prepare and record with the County Recorder a Notice of Completion for the Project.

7.3. **Deliverables and Number of Copies**

Engineer shall provide to the District a hard copy of the following items produced in this phase, together with one copy of each item in electronic format:

7.3.1. Punch lists for each site;

7.3.2. Upon completion of the Project, all related project documents, including As-Builts, Record Drawings. These are the sole property of the District.

7.4. **Meetings**

During this phase, Engineer shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops as indicated below.

8. MEETINGS / SITE VISITS / WORKSHOPS

8.1. Engineer shall attend, take part in, and, when indicated, conduct meetings, site visits and workshops, as indicated below. Engineer shall chair, conduct and take minutes of all meetings Engineer attends (excluding Governing Board meetings and Citizens' Bond Oversight Committee meetings). Engineer shall invite the District and/or its representative to participate in these meetings. Engineer shall keep a separate log to document design/coordination comments generated in these meetings.

8.2. General Meeting, Site Visit and Workshop Requirements

8.2.1. Engineer shall always be prepared to answer questions and issues from District staff, site staff, potential bidders, and/or contractors, as applicable.

8.2.2. Engineer shall maintain a log of all meetings, site visits or site observations held in conjunction with the design and construction of the Project, with documentation of major discussion points, observations, decisions, questions or comments. These shall be furnished to the District and/or its representative for inclusion in the overall Project documentation.

8.2.3. As required, Engineer shall provide at no additional cost to the District copies of all documents or other information needed for each meeting, site visit, and workshop.

8.2.4. Each meeting may last up to one full day (eight (8) hours) and shall be held at the District office or at one of the Project sites, unless otherwise indicated.

8.3. Meetings During Project Initiation Phase (one (1) meetings)

8.3.1. Within the first week following execution of the Agreement, the Engineer shall participate in one Project kick-off meeting for all sites to determine the Project intent, scope, budget and timetable, which shall encompass the following:

8.3.1.1. The Engineer, its appropriate consultant(s), and District staff, shall attend the meeting.

8.3.1.2. The Project kick-off meeting will introduce key team members from the District and the Engineer to each other, defining roles and responsibilities relative to the Project.

8.3.1.3. During this meeting, the Engineer shall:

8.3.1.3.1. Identify and review pertinent information and/or documentation necessary from the District for the completion of the Project.

8.3.1.3.2. Review and explain the overall Project goals, general approach, tasks, work plan and procedures and deliverable products of the Project.

8.3.1.3.3. Review and explain the scope of work and Project work plan for all parties present; determine any adjustments or fine tuning that needs to be made to the work plan.

8.3.1.3.4. Review documentation of the Project kick-off meeting prepared by the District's representative and comment prior to distribution.

8.4. Initial Site Visits (Three (3) meetings)

8.4.1. Engineer shall visit the Project sites to complete a visual inventory and documentation of the existing conditions.

8.5. Meetings During Construction Documents Phase (Three (3) meetings)

8.5.1. Prior to beginning work on the fifty percent (50%) design package, Engineer shall conduct one meeting, per package of submittal, with the District to revise the Design Development package and receive comments.

8.5.2. At the time designated for completion of the fifty percent (50%) submittal package, Engineer shall conduct one meeting, per package or submittal, with the District to review the following:

8.5.2.1. Present the fifty percent (50%) submittal package for review and comment to proceed with preparation of final plans and specification.

8.5.2.2. Engineer and District shall provide further review of Project scope and budget, including the Construction Cost Budget and the Construction Budget;

8.5.3. At the time designated for completion of the one hundred percent (100%) Construction Document package, Engineer shall conduct one meeting, per package or submittal, with the District to review the following:

8.5.3.1. Present the hundred percent (100%) Construction Document package for review and comment to proceed with preparation of final plans and specification.

8.5.3.2. Engineer and District shall provide further review of Project scope and budget, including the Construction Cost Budget and the Construction Budget.

8.6. Meetings During Bidding Phase (Nine (9) meetings – two bid conference meeting for each package and one preconstruction meeting for each package)

8.6.1. Attend and take part in two meetings, per package of submittal, with all potential bidders, District staff, and Construction Manager.

8.6.2. Conduct one kick-off meeting, per site, with the successful bidder, District staff, and Construction Manager to finalize the roles and responsibilities of each party and provide protocols and processes to follow during construction.

8.7. Meetings During Construction Administration Phase

- 8.7.1. Engineer shall visit the Project site as necessary or when requested, and in no case less than once per week, sufficient to determine that the Project is being constructed in accordance with the plans and specifications, and to resolve discrepancies in the contract documents and to monitor the progress of the construction of the Project. Engineer may coordinate these site visits so that it observes more than one site on one site visit to the District.
- 8.7.2. Conduct weekly project meetings with District staff to review with District staff the progress of the work at each site. Engineer acknowledges that one or more sites may not be completed in this timeframe and agrees to attend weekly project meetings, at no additional cost to the District, until the work at each Project site is complete.
- 8.7.3. Engineer shall ensure that consultant(s) visit the site in conformance with their agreement.

8.8. Citizens' Bond Oversight Committee Meetings (if applicable)

Engineer acknowledges that the design and construction of the Project is subject to oversight by the District's citizen bond oversight committee. Engineer shall, at the District's direction, attend District citizen bond oversight committee meeting(s) and present the Engineer's design to the District's citizen bond oversight committee for review and recommendation to the District's governing board.

8.9. Governing Board Meetings

Engineer acknowledges that the District's governing board must approve all designs. Engineer shall, at the District's direction, attend District governing board meeting(s) and present the Engineer's design to the District's governing board for review and approval.

EXHIBIT "B"

CRITERIA AND BILLING FOR EXTRA SERVICES

The following Extra Services to the Agreement shall be performed by Engineer if needed and if authorized or requested by the District:

1. Making revisions in drawings, specifications, or other documents when such revisions are:
 - 1.1. Required to comply with direction from the District that is substantively different than approvals or instructions previously given by the District.
 - 1.2. Required by the enactment or revisions of codes, laws, or regulations subsequent to the preparation of the Conforming Set, unless those enactments or revisions were foreseeable or reasonably should have been foreseeable by the Engineer prior to preparation of the Conforming Set.
 - 1.3. Due to changes required as a result of the District's failure to respond to a written request from the Engineer within a reasonable time, as requested by Engineer.
2. Providing services required because of significant documented changes in a Project initiated by the District, including but not limited to size, quality, complexity, the District's schedule, or method of bidding or negotiating and contracting for construction.
3. Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing services required in connection with replacement of that work.
4. Providing services made necessary by the default of contractor(s), by major defects, or deficiencies in the work of contractor(s).
5. In the absence of a final Certificate of Payment or Notice of Completion, providing Services more than sixty (60) days after the date of completion of work by contractor(s) and after Engineer has completed all of its obligations and tasks under the Agreement.

6. Providing deliverables or other items in excess of the number indicated in **Exhibit "A."** Before preparing, providing, sending, or invoicing for extra deliverables, Engineer shall inform the District that expected deliverables may be in excess of the number indicated in **Exhibit "A,"** so that District can procure the additional deliverables itself or direct Engineer to procure the deliverables at District's expense or on District's account at a specific vendor.
7. Providing services as directed by the District that are not part of the Services of this Agreement.
8. Providing services as an expert and/or witness for the District in any mediation, arbitration, and/or trial in which the Engineer is (1) not a party, and (2) did not in any way cause the dispute that is being adjudicated.
9. Providing training, adjusting, or balancing of systems and/or equipment
10. The following rates, which include overhead, administrative cost and profit, shall be utilized in arriving at the fee for Extra Services and shall not be changed for the term of the Agreement.

<u>Job Title</u>	<u>Hourly Rate</u>
Principal In Charge	\$270.00
Project Manager	\$190.00
Engineering Technician	\$165.00
PW Inspector	\$150.00
Laboratory Technician	\$125.00
Admin Personnel	\$ 85.00

11. The mark-up on any approved item of Extra Services shall not exceed five percent (5%).

EXHIBIT "C"

SCHEDULE OF WORK

1. Promptly after the execution of this Agreement, the Engineer shall prepare and submit for approval to the District a Schedule of Work showing the order in which Engineer proposes to carry out Engineer's work ("Schedule of Work"). The Schedule of Work shall apply to the completion of all services listed hereunder within the times established by this Agreement. The Schedule of Work shall be in the form of a progress chart clearly delineating all important increments and review dates. Engineer shall update the Schedule of Work on a monthly basis and deliver one (1) copy to the District along with the monthly billing.

Phase	
Pre-Design & Construction Document	October-December 2024
Bidding & Awarding	January - February 2025
Construction	June - July 2025
Close Out	August-September 2025

2. Engineer shall complete all work and services required per the Schedule of Work after written authorization from the District to proceed.
3. The durations stated in the Schedule of Work shall include the review periods required by the District and all other regulatory agencies.
4. All times to complete tasks set forth in this Exhibit are of the essence, as per Article 2 of the Agreement. If delays in the Schedule of Work are imposed by the District's inability to comply with requested meeting schedules, Engineer shall maintain the right to request an adjustment in the Schedule of Work if deemed necessary to meet the deadlines set forth in this Exhibit. If approved, such extensions shall be authorized in writing by the District.

EXHIBIT "D"

PAYMENT SCHEDULE

1. Compensation

- 1.1. The payment of consideration to Engineer as provided herein shall be full compensation for all of Engineer’s Services incurred in the performance hereof, including, without limitation, all costs for personnel, travel within two hundred (200) miles of a Project location, offices, per diem expenses, printing and shipping of deliverables in the quantities set forth in **Exhibit “A.”** or any other direct or indirect expenses incident to providing the services. Except as expressly set forth in the Agreement and **Exhibit “B,”** there shall be no payment for extra costs or expenses.
- 1.2. The total compensation to Engineer shall be as stated in Article 6 of the Agreement.
- 1.3. District shall pay Engineer as follows for all Services contracted for under this Agreement:

PERCENTAGE OF TOTAL FEE PER PHASE	
Phase	Phase Amount
Pre-Design/Engineering Program Development Phase	10%
Design Documents	25%
Construction Documents Phase	30%
Bidding Phase	5%
Construction Administration Phase	20%
Closeout Phase (Divided as indicated below)	10%
Generate Punch List	2%
Sign Off On Punch List	2%
Receive and Review All M & O Documents	2%
Filing All Required Closeout Documents	4%

2. Method of Payment

Invoices shall be on a form approved by the District and are to be submitted electronically to the District via the District’s authorized representative.

- 2.1. Engineer shall submit to the District for approval a copy of the Engineer’s monthly pay request format.
- 2.2. Upon receipt and approval of Engineer’s invoices, the District agrees to make payments within thirty (30) days of receipt of the invoice as follows:
 - 2.2.1. Pre- Design/Engineering Program Development Phase:

Monthly payments for the percentage of Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon acceptance and approval of the Pre-Design/Engineering Program.

2.2.2. For Construction Documents Phase:

Monthly payments for percentage of Services complete up to ninety-five percent (95%) of the fee for the phase; one hundred percent (100%) payment upon acceptance and approval of the Construction Documents Phase by the District.

2.2.3. For Bidding Phase:

Monthly payments for the percentage of Services complete up to ninety-five percent (95%) of the fee for the phase; one hundred percent (100%) payment upon the District's award of the bid.

2.2.4. For Construction Administration Phase:

Monthly payments based on Engineer's invoices pursuant to the following:

2.2.4.1. Billed at an hourly rate for Services performed during that Phase, up to ninety-five percent (95%) of the fee for the phase; one hundred percent (100%) payment upon the District's agreement that the Engineer can generate a Punch List as part of the Closeout Phase.

2.2.4.2 The hourly rate(s) and terms of payment shall be as indicated herein including, without limitation, in **Exhibit "B."**

2.2.4.3. Regardless of the Services performed during any given month, the Engineer can invoice for no more than the percentage of construction completed on the Project, plus ten percent (10%), until the Project is seventy percent (70%) complete. (For example, if the construction of the Project is 65% complete at the end of July, the Engineer can invoice for no more than 75% of the portion of its Fee for Construction Administration through July.) After the construction of the Project is 70% complete, the Engineer can invoice for no more than the percentage of construction completed on the Project. (For example, if the construction of the Project is 85% complete at the end of September, the Engineer can invoice for no more than 85% of the portion of its Fee for Construction Administration through September.)

2.3. For Closeout:

Individual payment(s) proportionate to the items completed within this Phase.

3. Format and Content of Invoices

3.1. Engineer acknowledges that the District requires Engineer’s invoices for Services must include explanations of the Services performed. For invoices for Hourly Services (e.g. extra services, time and materials, etc.) a more detailed explanation, with specificity, is required. For example, the following descriptions, in addition to complying with all other terms of this Agreement, would be payable for invoices for Hourly Services. The times indicated below are just placeholders:

Review/Respond RFI’s, Construction Admin Meetings, Review Shop Drawings, Field Sketches	5.5 hours
Prepare Construction Documents: floor plans, exterior elevations, consultant coordination.	7.5 hours
Master Budget update, Master Schedule Update, Board Presentation, Accounting coordination	6.5 hours

EXHIBIT "E"

INSURANCE REQUIREMENTS

Engineer shall procure prior to commencement of the Services of this Agreement and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services hereunder by the Engineer, his agents, representatives, employees and consultant(s). Engineer's liabilities, including but not limited to Engineer's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Engineer's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated as a material breach of contract by the District.

1. Minimum Scope and limits of Insurance:

Coverage shall be at least as broad as the following scopes and limits:

- 1.1. **Commercial General Liability.** Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each project/location or the general aggregate limit shall be twice the required occurrence limit.
- 1.2. **Commercial Automobile Liability, Any Auto.** Two million dollars (\$2,000,000) per accident for bodily injury and property damage.
- 1.3. **Workers' Compensation Liability.** For all of the Engineer's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Engineer shall keep in full force and effect, a Workers' Compensation policy with statutory limits as required by California law. That policy shall provide employers' liability coverage with minimum liability coverage of two million dollars (\$2,000,000) per occurrence for work related bodily injury or disease. The Engineer shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
- 1.4. **Employment Practices Liability.** For all of the Engineer's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Engineer shall keep in full force and effect, an Employment Practices Liability policy. That policy shall provide employers' liability coverage with minimum liability coverage of two million dollars (\$2,000,000) per occurrence. The Engineer shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

- 1.5. **Professional Liability.** This insurance shall cover the prime design professional and his/her liability arising from the services of consultant(s) with a minimum of one million dollars (\$1,000,000) per claim/occurrence limit and two million dollars (\$2,000,000) aggregate limit, and subject to no more than twenty-five thousand dollars (\$25,000) per claim deductible, coverage to continue through completion of construction plus “tail” coverage for two (2) years thereafter.

The District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.

2. Deductibles and Self-Insured Retention:

The Engineer shall inform the District in writing if any deductibles or self-insured retention exceeds \$25,000. At the option of the District, either:

- 2.1 The District can accept the higher deductible;
- 2.2 The Engineer’s insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers; or
- 2.3 The Engineer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

3. Other Insurance Provisions:

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- 3.1 The District, the Construction Manager, their representatives, consultants, trustees, officers, officials, employees, agents, and volunteers (“Additional Insureds”) are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Engineer; instruments of Service and completed operations of the Engineer; premises owned, occupied or used by the Engineer; or automobiles owned, leased, hired or borrowed by the Engineer. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.
- 3.2 For any claims related to the projects, the Engineer’s insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Engineer’s insurance and shall not contribute with it.
- 3.3 Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

3.4 The Engineer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3.5 Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District. At the option of the District, the Engineer shall be the party required to provide the District this notice in lieu of the Engineer's insurance providers.

4. Acceptability of Insurers

Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A:VII. The Engineer shall inform the District in writing if any of its insurer(s) have an A.M. Best's rating less than A:VII. At the option of the District, either:

4.1 The District can accept the lower rating;

4.2 Require the Engineer to procure insurance from another insurer.

5. Acceptability of Insurers

Engineer shall furnish the District with:

5.1 Certificates of insurance showing maintenance of the required insurance coverage;

5.2 Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before Services commence.

ROOFING CONTRACT FINANCIAL INTEREST CERTIFICATION
(Public Contract Code section 3006)

PROJECT/CONTRACT NO: Z0534 - 2025 Paving Maintenance between San José Unified School District ("District" or "Owner") and Pavement Engineering Inc. ("Engineer / Engineer") ("Contract" or "Project").

I Bill Long, Pavement Engineering, Inc.
Name Name of Engineer

certify that I have not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with the roof project contract on this project. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Furthermore, I Bill Long, Pavement Engineering, Inc.
Name Name of Engineer

certify that I do not have, and throughout the duration of the contract, I will not have, any financial relationship in connection with the performance of this contract with any Engineer, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I Bill Long, Pavement Engineering, Inc.
Name Name of Engineer

Have the following financial relationships with an Engineer, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract:

Name of firm ("Firm"): pavement Engineering Inc.

Mailing address: 7610 Avianca Drive Redding CA, 96002

Addresses of branch office used for this Project: Same

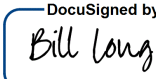
If subsidiary, name and address of parent company: N/A

For Projects without substantive roofing components, check the following box and execute this certification:

- The Work on the Contract (1) does not include the replacement or repair of a roof or (2) is a repair of twenty five percent (25%) or less of the roof, (3) or is a repair project that has a total cost of twenty-one thousand dollars (\$21,000) or less.

I certify that to the best of my knowledge, the contents of this disclosure are true, or are believed to be true.

Proper Name of Engineer / Engineer: Bill Long

Signature: 
7BC4B013179C44F...

Date: 10/30/2024

Print Name: Bill Long

Title: CEO



CERTIFICATES

THE UNDERSIGNED EXECUTE THIS FORM AND HEREBY CERTIFIES TO THE GOVERNING BOARD OF THE DISTRICT THAT UNDERSIGNED IS:

- (1) A representative of the Architect,
- (2) Familiar with the facts herein certified,
- (3) Authorized and qualified to execute this certificate on behalf of Architect and that by executing this Agreement is certifying the following items.

Fingerprint and Background Certification. Business entities entering into a Service Agreement with the District shall comply with Education Code section [45125.1](#). Such entities are responsible for ensuring full compliance with the requirements of this statute and should thoroughly review the requirements thereunder.

The Architect and the Architect Parties shall at all times comply with the fingerprint and background certification requirements as set forth below. Specifically, by checking an applicable option below, Architect hereby represents and warrants to District the following:

- All Workers Fingerprinted.** The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor’s employees and all of its subcontractors’ employees who interact with pupils, outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee, has a valid criminal records summary as described in Education Code Section 44237 (Contractor shall “require each applicant for employment in a position requiring contact with minor pupils to submit two sets of fingerprints prepared for submittal by the employer to the Department of Justice for the purpose of obtaining criminal record summary information from the Department of Justice and the Federal Bureau of Investigation.”). A complete and accurate list of Contractor’s employees and of all of its subcontractors’ employees who may interact with District pupils during the course and scope of the Contract is attached hereto; and/or
- Physical Barrier.** Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of work, a physical barrier at the Project site, that will limit contact between Contractor’s employees and District pupils at all times; and/or
- Continual Supervision by Fingerprinted Employee.** Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees and its subcontractors' employees is:

Name: N/A Title: N/A

Name: N/A Title: N/A

Name: N/A Title: N/A

DS
Handwritten signature

Megan’s Law (Sex Offenders). I have verified and will continue to verify that the employees of the Engineer and the Engineer Parties having contact with District students under this agreement are **not** listed on California’s “Megan’s Law” Website (<http://www.meganslaw.ca.gov/>).

Tuberculosis Certification. The Engineer and the Engineer Parties shall at all times comply with the certification requirements as set forth below. Specifically, by checking the one applicable option below, Engineer hereby represents and warrants to District the following:

- Engineer and/or Engineer Parties will not be present on a District school site and will not have contact with District students when District students are present during the term of this Agreement.
- District has determined that Engineer will not have frequent or prolonged contact with students. District’s determination is in compliance with and supported by California Education Code Section [49406\(m\)](#).
- The following Engineer and/or Engineer Parties shall or may be on a District school site and have contact with District students during the term of this Agreement and, at no cost to District, they have received a tuberculosis risk assessment that complies with the requirements of California Education Code Section [49406](#). In addition, the Engineer shall maintain on file the certificates showing that the Engineer Parties were examined and found free from active tuberculosis. These forms shall be regularly maintained and updated by Engineer and shall be available to District upon request or audit.

Engineer further agrees and acknowledges that all new personnel hired after the effective date of this Agreement are subject to the tuberculosis certification requirements and shall be prohibited from having any contact with District students until the tuberculosis certification requirements have been satisfied and District determines whether any such contact is permissible.

COVID-19 Certification. The Engineer and the Engineer Parties shall at all times comply with the Covid-19 certification requirements as set forth below. Engineer hereby represents and warrants to District the following:

I acknowledge and am aware of all applicable requirements and recommendations to mitigate the spread of COVID-19, including [COVID-19 Public Health Guidance for K–12 Schools to Support Safe In-Person Learning for the 2022–23 School Year](#) and [San José Unified’s COVID Health and Safety Information](#).

Engineer and the Engineering Parties further agrees and acknowledges that District may at its sole discretion modify the requirements of this COVID-19 certification to ensure the health and safety of students.



Lobbyist Certification. Engineer and the Engineer Parties shall at all times comply with the lobbyist certification requirements as set forth below. Specifically, by checking the one applicable option below, Engineer hereby represents and warrants to District the following:

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


Conflict of Interest Certification. The Engineer and the Engineer Parties shall at all times comply with the conflict of interest certification requirements as set forth below. Specifically, by checking the one applicable option below, Engineer hereby represents and warrants to District the following:

- Engineer and/or Engineer Parties have read and understand the District’s Conflict of Interest Code (Board Bylaw 9270) and, to the best of Engineer’s knowledge, there are no conflicts of interest that must be disclosed pursuant to the Conflict of Interest Code.
- Engineer and/or Engineer Parties have read and understand the District’s Conflict of Interest Code and, Engineer knows or has reason to believe that Engineer has a conflict of interest that requires disclosure and Engineer and/or Engineer Parties shall comply with the applicable disclosure requirements of the District’s Conflict of Interest Code. In addition, the Engineer shall maintain on file statements of economic interests in accordance with applicable disclosure requirements. These records shall be regularly maintained and updated by Engineer and shall be available to District upon request or audit.

I acknowledge and certify under penalty of perjury that I am duly authorized to legally bind the Engineer to all provisions and items included in this certification, that the contents of this certification are true, and that this certification is made under the laws of the State of California.

Date: 10/30/2024

Company: Pavement Engineering, Inc.

Signature: 7BC4B013179C44F...

Name: Bill Long

Title: CEO

