

**AGREEMENT FOR
PROJECT INSPECTION SERVICES
BY AND BETWEEN
MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT
AND**

[REDACTED]

This Agreement for Project Inspection Services (“**Agreement**”) is made is made and entered into as of [REDACTED], 20__, by and between **Mountain View Whisman School District (“District”)** and [REDACTED] (“**Inspector**”) (individually a “**Party**” or collectively the “**Parties**”).

RECITALS

WHEREAS, District intends to award contracts to construction contractor(s) to perform work (“**Construction Work**” or “**Work**”) at _____ (“**Site**”).

WHEREAS, District has retained the services of [Insert Architect Name] as the architect(s) and/or design professional(s) of the Construction Work (“**Architect(s)**”); and

WHEREAS, the Construction Work shall be performed pursuant to District-approved plans, drawings, and specifications prepared by the Architect (“**Contract Documents**”), and rules, regulations and statutes applicable to school construction and other contract documents; and

WHEREAS, District requires the services of a Division of the State Architect (“**DSA**”) approved project inspector during the Construction Work; and

WHEREAS, pursuant to Education Code section 17311, the District shall provide for and require competent, adequate, and continuous inspection during construction or alteration by an inspector satisfactory to the Architect or Structural Engineer and the Department of General Services; and

WHEREAS, Inspector warrants and represents that Inspector is competent to perform the duties and responsibilities required by this Agreement and by applicable laws and regulations for the inspection of Construction Work at the Site (“**Project**”).

AGREEMENT

NOW, THEREFORE, for good and sufficient consideration, receipt of which is acknowledged, the Parties agree as follows:

1. Services.

1.1. Inspector shall, as requested by District, act as the project inspector for the Project. Inspector shall observe construction operations to ensure that the Project is constructed and completed in strict conformity with all applicable laws, regulations, the Contract Documents, and the “Performance of Services” section herein (“**Services**”). The Services include project inspection services for each component as listed below.

1.2. Any one component or combination of components of the Services may be changed, or terminated, in the same manner as the Services, 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). Inspector shall invoice for each component separately and District shall compensate Inspector for each component separately on a proportionate basis based on the level and scope of work completed for each component.

1.3. The estimated approximate hard construction costs for the Site is [REDACTED] (\$XXXXXXX):

2. Term. The term of this Agreement shall be the period of construction of the Project and shall terminate when the

notice of completion for the Construction Work is recorded (“Term”), unless terminated or otherwise cancelled.

3. **Submittal of Documents.** The Inspector shall not commence Services under this Agreement until the Inspector has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

- Signed Agreement
- Workers' Compensation Certification
- Fingerprinting/Criminal Background Investigation Certification
- Insurance Certificates and Endorsements
- W-9 Form

4. **Compensation.** Inspector’s fee for the performance of Services at the above Site shall be \$ _____ (\$XXXXXXX) per month for a total maximum fee not to exceed \$ _____ (\$XXXXXXX) (“Fee”).

4.1. The Inspector shall submit a monthly itemized statement of Service charges and expenses (if applicable) to the District on the fifth (5th) day of each month. Inspector shall prepare a separate itemized statement for the Site at which Inspector provides Services. The itemized statement shall show the days and hours worked each workday Inspector performs Services for the previous month. District will permit a one (1) month grace period beyond this time for the Inspector to submit its invoice for a particular month’s work. No amounts shall be due or owing to the Inspector if it fails to submit an invoice to the District at or before the end of that grace period.

4.2. Payment for the Services shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Inspector submits an itemized statement to the District for Services performed and after the District’s written approval of the Services performed.

4.3. The daily job log referred to herein shall detail the time spent by the Inspector in the performance of Services pursuant to this Agreement.

4.4. Inspector shall provide to the District on a timely basis and to not cause a delay in DSA’s approval of the Project, all verified report(s) for all scope(s) of Work and all other required Project documents if not already completed and provided to the District. District shall retain five percent (5%) of Inspector’s Fee or Ten Thousand Dollars (\$10,000), whichever is greater, until Inspector has filed all required verified report(s) and other Project Documents.

4.5. If requested by the District, the Inspector shall provide additional or extended Services for the Project as may be necessary because of changed conditions including, without limitation, conditions made necessary by Work damaged by fire or other Acts of God during construction or prolongation of the initial construction contract time beyond the construction contract time schedule. Additional or extended Services shall only be compensable if Inspector has exhausted the Fee, or if the additional or extended Services are not a component of the Services. Those additional or extended Services shall be as agreed to by the District and shall be based on rates at or below the hourly, daily, weekly, or monthly rates as indicated here:

Maximum Rate for Additional or Extended Services

Hourly	\$ _____ /Hour
Daily	\$ _____ /Day
Weekly	\$ _____ /Week
Monthly	\$ _____ /Month

5. **Expenses.** District shall not be liable to Inspector for any costs or expenses paid or incurred by Inspector in performing

Services, except for those set forth below. Inspector agrees that travel may be required, at Inspector's expense. These travel expenses are not reimbursable.

5.1. Not applicable

6. **Independent Contractor.** Inspector, in the performance of this Agreement, shall be and act as an independent contractor. Inspector understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Inspector shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Inspector's employees. In the performance of the Services contemplated, Inspector is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of Inspector's work, District being interested only in the results obtained.

7. **Inspector's and Subconsultant Registration and Compliance.**

7.1. Inspector acknowledges that, for purposes of Labor Code section 1725.5, all or some of the Work is a public work to which Labor Code section 1771 applies and that the Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Inspector shall comply with Labor Code section 1725.5, including without limitation the registration requirements for itself and its subconsultants. Inspector represents that all of its subconsultants are registered pursuant to Labor Code section 1725.5.

7.2. To the extent applicable, Inspector shall pay workers not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed within the boundaries of the District, pursuant to sections 1770 et seq. of the California Labor Code. Prevailing wage rates are available from the District or on the Internet at: <<http://www.dir.ca.gov>>.

7.3. Labor Code section 1771.1(a) states the following:

7.3.1. "A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

7.4. Inspector shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations.

7.5. Inspector shall post job site notices, as required by law, including without limitation Labor Code section 1771.4.

7.6. Inspector shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

8. **Designated Representatives.** Inspector 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.

9. **Materials.** Inspector shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the Services to be provided pursuant to this Agreement, except as follows:

9.1. Not applicable

10. **Performance of Services.**

10.1. **Standard of Care.**

10.1.1. Inspector represents that Inspector has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Inspector's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts. Inspector's Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.

10.1.2. Inspector hereby represents that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of the Agreement.

10.1.3. Inspector shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Inspector understands that the District relies upon such professional quality, accuracy, completeness, and coordination by Inspector in performing the Services.

10.1.4. Inspector shall ensure that any individual performing work under the Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the work assigned to them.

10.2. **Meetings.** Inspector agrees to participate in coordination meetings to discuss District strategies, timetables, implementations of Services, and any other issues deemed relevant to the Project.

10.3. **District Approval.**

10.3.1. The District has the right to inspect and supervise to secure satisfactory completion of the Services.

10.3.2. Prior to any documents being made public, Inspector shall provide in draft form to District staff and District legal counsel, all documents that it or its subconsultants prepare.

10.4. **Inspector's Authority**

10.4.1. **Full-Time Inspector under Direction of Architect.** Inspector shall act as the Project inspector on a full-time, continuous basis, including during off hours, and weekend hours as deemed necessary by Inspector, the Architect and/or District. Inspector shall act under the direction of the Architect and shall be responsible to the Department of General Services, Division of the State Architect for enforcement of the Project plans and specifications.

10.4.2. **Authority to Reject or Stop Construction Work.** Inspector shall not have the authority to direct a contractor in the execution of the Construction Work nor to stop work on the Project. However, if Inspector observes Construction Work being performed in deviation from the approved plans, specifications, or change orders or in violation of any local, state or federal statute, Inspector shall, if such deviation or violation is not immediately corrected by contractor when brought to the attention of contractor, direct the contractor in writing, while simultaneously notifying the Architect, and the District, to cease installation of that nonconforming portion of Construction Work, pending further decision by Architect and District, and shall in all cases, make a written record of the event. Inspector shall deliver copies of the written record to District within twenty-four (24) hours of the event.

- 10.4.3. **Conflict of Interest.** Inspector shall not have a financial or investment interest in any person, contractor, entity, or their employees, agents, or subcontractors with responsibilities for the construction of, design of, or other work or duties related to the Project. Inspector shall not have the authority to assist any person, contractor, entity, or their employees, agents, or subcontractors in the performance of the any work on the Project. Inspector shall not undertake any responsibilities of any person, contractor, entity, or their employees, agents, or subcontractors. It shall be understood, however, that Inspector shall make every attempt to remove obstacles preventing the orderly progress of work on the Project.
- 10.5. **On-Site Presence.** Inspector shall be physically present at the Site at all times necessary for performance of its duties as project inspector. Inspector shall have personal knowledge of the Construction Work at all stages. Inspector shall accompany the Architect, District, the construction manager, or other consultants when any of them are observing the Construction Work. Inspector shall be physically present for all concrete work and masonry work.
- 10.6. **Inspector's General Obligations, Duties, and Responsibilities.** Inspector shall completely and timely inspect all portions of the Construction Work as it progresses, including, without limitation, the following:
- 10.6.1. Inspector shall endeavor to guard District and the State of California (“State”) against apparent defects and deficiencies in the Construction Work and shall act on behalf of District to see that the Construction Work is executed and completed in a timely manner in accordance with the Contract Documents and applicable laws and regulations.
- 10.6.2. Inspector shall study and fully comprehend the requirements of the Construction Documents in order to provide competent inspection of the Construction Work. Inspector shall consult the Architect to resolve any uncertainties in Inspector’s comprehension of the Contract Documents. Inspector shall possess a thorough understanding of the requirements of the Contract Documents for each portion of Construction Work before that portion of Construction Work is performed.
- 10.6.3. Inspector shall identify all non-compliant Construction Work as work on the Project progresses in order to facilitate timely corrective action.
- 10.6.4. Inspector shall verify code-compliant implementation of the materials testing and special inspection program, as applicable, including notification of materials testing labs, the performance of material sampling and special inspections, and the review of all material sampling and special inspection reports. Inspector shall not be required to conduct tests that are specified in the Contract Documents to be performed by a testing or inspection laboratory or firm.
- 10.6.5. Inspector shall comply with all the requirements of a DSA project inspector including, without limitation, all the requirements included and/or referenced in the most recent versions of the following forms, attached hereto as **Exhibit A**:
- 10.6.5.1. Form DSA IR A-7, Project Inspector: Certification and Approval.
- 10.6.5.2. Form DSA IR A-8, Project Inspector and Assistant Inspector: Duties and Performance.
- 10.6.6. Inspector shall not authorize deviations from the Contract Documents.
- 10.6.7. Inspector shall obtain authorization to access DSAbbox and submit all communications and documents through DSAbbox.
- 10.7. **Inspector Maintenance of Records, Job File, and Building Codes**
- 10.7.1. **Inspection Records.** Inspector shall maintain detailed, comprehensive, organized, accessible, and

timely documentation of all inspections of the Construction Work ("**Inspection Records**"). The Inspection Records shall identify all compliant and non-compliant Construction Work. The Inspection Records shall include, without limitation:

10.7.1.1. **Record of Inspection on Plans.** A systematic record of the inspection of all Construction Work required by the Construction Documents. Inspector shall perform this by marking properly completed Construction Work on a set of Construction Documents to verify that the requirements of the plans and specifications have been met.

10.7.1.2. **Construction Procedure Records (Title 24, Part 1, Section 4-342(6)).** These shall include, without limitation, concrete placement operations, welding operations, pile penetration blow counts, and other records specified on the approved Construction Documents.

10.7.1.3. **Deviations and Resolution of Deviations.** The resolution of reported deviations.

10.7.1.4. **Daily Job Log.** Daily job log of the Inspector's time spent, areas and scopes inspected, and tasks performed on the Site.

10.8. **Job File.** Inspector shall maintain a record of his/her attendance at the Site and shall maintain files of schedules, notes, communications, records, documents, and drawings on behalf of the District.

10.8.1. The schedules, notes, communications, records, documents, and drawings shall be regularly reviewed with the District, shall be kept in an order as directed by the District (e.g. by date or type of transaction).

10.8.2. Inspector shall assist District staff in preparing quarterly progress reports to the governing board of the District.

10.8.3. In addition, the Inspector shall organize and maintain a complete system of construction records, including, but not limited to:

10.8.3.1. All Inspection Records.

10.8.3.2. Job memo file.

10.8.3.3. Site conference file.

10.8.3.4. Progress reports.

10.8.3.5. Test and Inspection List (Form DSA-103-1 (Revised 01-01-12)).

10.8.3.6. Correspondence file, including, without limitation, all correspondence from/to Architect, construction contractor(s), District, and DSA.

10.8.3.7. Complete change order file.

10.8.3.8. All Addenda.

10.8.3.9. All deferred approval documents.

10.8.3.10. Complete shop drawings, samples, and submittal file.

10.8.3.11. All Contract Documents including, without limitation, the approved plans and specifications.

10.8.4. All records and documents kept by Inspector shall be and remain the property of District.

10.9. **Building Codes.** In addition to the above documents, Inspector shall keep at the Site, a copy of all applicable and up to date building codes and regulations necessary to perform required inspections, including, without limitation, the following parts of Title 24 of the California Code of Regulations in the edition referenced in the Contract Documents:

10.9.1. Title 24, Part 1 (Administrative Code).

10.9.2. Title 24, Part 2, Volumes 1, 2, and 3 (Building Code).

10.9.3. Title 24, Part 3 (Electrical Code).

10.9.4. Title 24, Part 4 (Mechanical Code).

10.9.5. Title 24, Part 5 (Plumbing Code).

10.9.6. Title 24, Part 6 (Energy Code).

10.10. **Communications, Reporting, and Notifications**

10.10.1. **DSA Notification.** Inspector shall notify DSA:

10.10.1.1. At least forty-eight (48) hours prior to the start of any Construction Work at the Site.

10.10.1.2. At least forty-eight (48) hours prior to completion of any foundation excavations/trenches.

10.10.1.3. At least forty-eight (48) hours prior to the first concrete pour/placement at the Site.

10.10.1.4. When Construction Work has been suspended for a period of more than two (2) weeks.

10.10.2. **Notification of District and Architect.** Inspector shall immediately report to District, the Architect, and the construction manager any failure by any contractor or subcontractor to comply with the Contract Documents, or any attempted substitutions of required materials and/or workmanship in any portion of the Construction Work. Inspector shall inform the District, the Architect, and the construction manager of any conflicts, ambiguity, and/or inconsistencies in the Contract Documents and of any interpretations, suggestions, comments, and/or criticisms the Inspector has related to the Project or the Contract Documents. Inspector shall advise the District of needed inspections related to the status of the Construction Work, and District shall provide the schedule of Construction Work to Inspector so that both Parties arrange timely inspections.

10.10.3. **Deviation Notification of Contractor(s).** Inspector shall notify a contractor verbally and in writing of any deviations from the approved Contract Documents by that contractor or its subcontractors. If the contractor does not immediately correct the deviation upon the verbal notice, then copies of the written notice shall be forwarded immediately to the District, the Architect, the construction manager, and DSA. Inspector shall document all resolutions of reported deviations and make them part of the Inspection Records.

10.10.4. **Contractor Inquiries.** Contractors are expected to direct inquiries regarding Construction Document interpretation to the Architect through the Inspector, including the contractor's uncertainties regarding the Construction Documents. Inspector shall document these inquiries and immediately forward them to the Architect for response.

10.10.5. **Construction Manager.** Inspector shall also work with the construction manager if the District uses a construction manager on any portion of the Project. If District does not use a construction manager on the Project, then all references to a construction manager herein shall mean the District.

10.11. **Inspector Responsibilities for Forms and Reports**

10.11.1. **Semi-Monthly Reports.** Inspector shall submit semi-monthly reports on the 1st and the 15th of each month to District, the Architect, and DSA.

10.11.2. **Verified Reports.** Inspector shall submit verified reports at the following times that will include notification of outstanding deviations:

- 10.11.2.1. Work on the Project is suspended for a period of more than one (1) month.
- 10.11.2.2. Inspector is terminated for any reason.
- 10.11.2.3. DSA requests a verified report.
- 10.11.2.4. If District occupies any building on the Site.
- 10.11.2.5. When the Construction Work is complete.

Each verified report shall be on Form DSA-6, or more current form, and shall clearly describe all non-compliant Construction Work including change order work that is pending DSA approval. Each verified report shall state that Inspector knows of his/her personal knowledge that the Construction Work has, in every material respect, been performed in compliance with the Construction Documents. Inspector shall declare under penalty of perjury that all information indicated on the report is true.

- 10.12. **All Other Reports.** In addition, Inspector shall initiate and file with DSA prior to their due date, any other Project-related, forms, required of contractors, subcontractors, testing and inspection laboratories, and the District. Inspector shall prepare and forward to the District, Architect, and DSA all other reports required by Title 24 of the California Code of Regulations, the State, and/or DSA.
- 10.13. **Inspector Responsibilities for Laboratory Structural Tests.** Inspector shall initiate and expedite testing by independent test laboratories and shall maintain all necessary back up information for special inspection invoice processing and shall be responsible for the sequential progress of the Project related to the test lab reports.
- 10.14. **Inspector Responsibilities at Beginning of Occupancy.** Inspector shall observe the District's occupancy or movement of District-furnished equipment to each Site before completion and record and report any damages occurring so any claims may be fully documented.
- 10.15. **Compliance with DSA Inspection Card Process.** Inspector shall perform any service or work required to comply with DSA's inspection card process that establishes specific construction milestones that must be approved by the Inspector before contractor(s) can start subsequent work on a project.
- 10.16. **Facilities/Equipment.** District shall provide for Inspector's operational needs, such as office supplies, telephone, and fax machine.
- 10.17. **Inspector Certification.** Inspector shall provide the District a copy of documents satisfactory to the District certifying that Inspector holds proper state certification and approval by DSA to perform the required Services for this Agreement. Inspector shall also provide any other documents or certification requested by the District. Inspector shall initiate and provide the District with Form DSA-5, or more current qualification/certification form.
- 10.18. **Substitute Inspector and/or Assistant Inspector.** Inspector shall provide the Services throughout the Term and shall not delegate its duties without the full knowledge and prior written consent of the District. In the event of Inspector's absence for more than two (2) consecutive days or unavailability for scheduled inspections, Inspector, at no cost to District, shall secure a substitute inspector and/or assistant inspector who shall be appropriately certified, approved by DSA, and pre-approved in writing by District, to perform the Services. Certification documents for the approved substitute inspector(s) and/or assistant inspector(s) shall be presented to District within thirty (30) working days after the date of this Agreement. All substitute inspector(s) and assistant inspector(s) shall be obligated to perform the Services while performing any work on the Project. Inspector shall provide technical guidance and monitoring of all substitute inspector(s) and assistant inspector(s).

10.19. **Other Jobs Outside of the Project.** Inspector shall be required to work full-time on the Project, and shall not work on or be under contract for another project without prior written approval from District, and without a reduction in compensation proportionate to the amount of time Inspector is required to be absent for responsibilities to another project.

10.19.1. In the event that this Agreement involves a company of inspectors, a DSA-approved inspector shall be designated as the Inspector for District and shall be on constant duty at the Site as described in this Agreement.

10.19.2. Inspector shall have the right to request and obtain an uncompensated release for a reasonable amount of time to fulfill unavoidable duties on other incomplete projects in progress at the beginning of the Project.

11. **Information.** To the extent applicable, Inspector shall obtain information from the District as follows:

11.1. **Furnished by District.** Upon request by Inspector, District shall furnish Inspector any information and documents readily available to District that the Inspector determines may be of use to the Inspector in the performance of the Services. District shall rely upon Inspector to determine which information and documents may be of use to the Inspector in performance of the Services. District makes no representations with respect to the reliability, accuracy, or completeness of any information or documents furnished by the District. Inspector shall determine if it is appropriate to rely on the District furnished information or documents. Inspector shall determine if clarification, additional information, or additional data is needed.

11.2. **Furnished by Others.** Inspector is to obtain, utilizing its own personnel, any required information that has been developed by other public or private entities that are not under contract to District. Inspector shall determine if it is appropriate to rely on the information or data developed by these other public or private entities. Inspector shall determine if clarification, additional information, or additional data is needed.

12. **Originality of Services.** Except as to standard generic details, Inspector agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Inspector and shall not be copied in whole or in part from any other source, except that submitted to Inspector by District as a basis for such services.

13. **Copyright/Trademark/Patent.** Inspector understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Inspector consents to use of Inspector's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

14. **Audit.** Inspector shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of broker transacted under this Agreement. Inspector shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Inspector shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Inspector and shall conduct audit(s) during Inspector's normal business hours, unless Inspector otherwise consents. If the Agreement involves the expenditure of public funds in excess of ten thousand dollars (\$10,000), the Agreement shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment. The audit shall be confined to those matters connected with the performance of the Agreement, including, but not limited to, the costs of administering the Agreement.

15. **Termination**

- 15.1. **Job Completion.** Unless previously terminated or otherwise cancelled, this Agreement shall terminate when the notice of completion for the Project is recorded with the County recorder.
- 15.2. **Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Inspector only for the Services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of Services by Inspector. Notice shall be deemed given when received by the Inspector or no later than three (3) days after the day the notice was mailed, whichever is sooner.
- 15.3. **Without Cause by Inspector.** Inspector may not terminate this Agreement without cause.
- 15.4. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
 - 15.4.1. Material violation of this Agreement by the Inspector; or
 - 15.4.2. Any act by Inspector exposing the District to liability to others for personal injury or property damage; or
 - 15.4.3. Inspector is adjudged a bankrupt, Inspector makes a general assignment for the benefit of creditors or a receiver is appointed on account of Inspector's insolvency.

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

- 15.5. **With Cause by Inspector.** Inspector may only terminate this Agreement after giving written notice of intention to terminate for cause and the expiration of the time to cure. Cause shall only include:
 - 15.5.1. Material violation of this Agreement by the District, or
 - 15.5.2. Failure of the District to timely pay undisputed Inspector invoices.

Written notice by Inspector shall contain the reasons for such intention to terminate and unless within thirty (30) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the thirty (30) calendar days cease and terminate. During the thirty (30) calendar days the Inspector shall continue providing Services to the District until the Agreement ceases and terminates. In the event of this termination, the District may secure the Services from another Inspector.

- 15.6. **Documentation upon Termination.** Upon termination, Inspector shall provide the District with all documents produced maintained or collected by Inspector pursuant to this Agreement, whether or not such documents are final or draft documents.

- 16. **Indemnification.** To the furthest extent permitted by California law, Inspector shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim"), arising out of, pertaining to or relating to, in whole or in part, the negligence, recklessness, errors or omissions, or willful misconduct of Inspector, its officials, officers, employees,

subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, and/or this Agreement, including without limitation the payment of all consequential damages.

17. Insurance

17.1. Inspector shall procure and maintain during the life of the Project the following insurance with minimum limits equal to the amount indicated below.

17.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Inspector, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from any portion of the Services.

17.1.2. **Workers’ Compensation and Employers’ Liability Insurance.** In accordance with provisions of section 3700 of the California Labor Code, Inspector shall be required to secure workers’ compensation coverage for its employees. In addition, the Inspector shall provide Employers’ Liability Insurance for all of its employees engaged in any work on the Project. If any class of employee or employees engaged in work under this Agreement are not protected under the Workers’ Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence work under this Agreement.

17.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Inspector’s profession.

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

17.2. **Proof of Carriage of Insurance.** Inspector shall not commence any work under this Agreement until all required insurance has been obtained and certificates indicating the required coverages have been delivered in duplicate to District and approved by District. Certificates and insurance policies shall include the following:

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

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

17.2.3. An endorsement stating that District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers’ Compensation Insurance, Professional Liability, and Employers’ Liability Insurance. An

endorsement shall also state that Inspector's insurance policies shall be primary to any insurance or self-insurance maintained by District.

17.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

17.3. **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, unless otherwise acceptable to District and agreed upon in writing.

18. **Assignment.** The obligations and liabilities of the Inspector pursuant to this Agreement shall not be assigned voluntarily by the Inspector nor assigned by operation of law, without express written consent of the District.

19. **Binding Contract.** This Agreement shall be binding upon the Parties hereto and upon their successors and assigns and shall inure to the benefit of the Parties and their successors and assigns.

20. **Compliance with Laws.**

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

20.2. **Compliance with Applicable Laws.** Inspector shall conform to the following specific rules and regulations as well as all other applicable laws, ordinances, rules, and regulations. Nothing in the Contract Documents is to be construed to permit Construction Work not conforming to these codes.

20.2.1. California Code of Regulations, Title 24, including amendments, in the edition referenced in the Contract Documents.

20.2.2. Regulations of the State Fire Marshall (Title 19, California Code of Regulations) and applicable local fire safety codes.

20.2.3. Labor Code of the State of California - Division 2, Part 7, Public Works and Public Agencies.

20.2.4. Education Code of the State of California

20.2.5. Industrial Accident Commission's Safety Orders, State of California.

20.2.6. National Electrical Safety Code, U. S. Department of Commerce.

20.2.7. National Board of Fire Underwriters' Regulations.

20.2.8. Manual of Accident Prevention in Construction, latest edition, published by the American General Contractors of America.

Inspector certifies that it is aware of the provisions of California Labor Code, the California Code of Regulations, and/or precedential decisions of the California Department of Industrial Relations and/or any of its subsidiary divisions 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 Inspector is performing Services as part of an applicable "public works" or "maintenance" project, and since the total compensation is \$1,000 or more, Inspector agrees to fully comply with and to require its

consultant(s) to fully comply with all applicable Prevailing Wage Laws.

21. **Certificates/Permits/Licenses.** Inspector and all Inspector's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of the Services. Except for any license or permits furnished by District, Inspector shall be fully responsible for identifying and obtaining all necessary licenses and permits for the timely prosecution of the Services.
22. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Inspector agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and District policy. Inspector and each subconsultant shall comply with Chapter 1 of Division 2, Part 7 of the Labor Code, beginning with § 1720, and including §§ 1735, 1777.5 and 1777.6, forbidding discrimination, and §§ 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Inspector or subconsultants. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. In addition, the Inspector agrees to require like compliance by all its subcontractor(s).
23. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Inspector performing of any portion of the Services.
24. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, Inspector must submit, upon request by District, appropriate documentation to District identifying the steps Inspector has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
25. **Interaction with the Media and Public.** Inspector shall promptly refer all inquiries from the news media or public to District and shall not make any statements to the media or the public relating to the Services. If Inspector receives a complaint from a citizen or the community, Inspector shall promptly inform the District about the complaint.
26. **Taxes.** Inspector shall be liable and solely responsible for paying all required taxes and other obligations, including but not limited to federal and state income taxes and social security taxes payable in connection with the Services and this Agreement. Inspector agrees to release, indemnify, defend, and hold District harmless from and against any worker's compensation or any tax liability which District may incur to any Federal or State governments with jurisdiction as a consequence of this Agreement. All payments made to Inspector may be reported to the Internal Revenue Service.
27. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
28. **District's Evaluation of Inspector and Inspector's Employees and/or Subcontractors.** District may evaluate Inspector in any manner which is permissible under the law. District's evaluation may include, without limitation:
 - 28.1. Requesting that District employee(s) evaluate Inspector and Inspector's employees and subcontractors and each of their performance.
 - 28.2. Announced and unannounced observance of Inspector, Inspector's employee(s), and/or subcontractor(s).
29. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed in connection with this Agreement.

- 30. **Disputes.** All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. If this method proves unsuccessful, then all claims, disputes or controversies as stated above may be decided through arbitration, if agreed to by all Parties.
- 31. **Confidentiality.** Inspector and all personnel designated by Inspector to perform under this Agreement shall maintain the confidentiality of all information received in the course of performing any work pursuant to this Agreement. This requirement to maintain confidentiality shall extend beyond the effective termination date of the Agreement.
- 32. **Employment with Public Agency.** Inspector, if an employee of another public agency, agrees that Inspector will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which Services are actually being performed pursuant to this Agreement.
- 33. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service, addressed as follows:

<p>District: Mountain View Whisman School District 1400 Montecito Ave. Mountain View, CA 94043 ATTN: Rebecca Westover</p>	<p>Inspector: _____ _____ _____, CA _____ ATTN: _____</p>
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Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service.

- 34. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties for the Services and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- 35. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District’s administrative offices are located.
- 36. **Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 37. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
- 38. **Authority to Bind Parties.** Neither Party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
- 39. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, expert fees, court costs and attorney’s fees.
- 40. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

- Individual
- Sole Proprietorship
- Partnership
- Limited Partnership
- Corporation, State: _____
- Limited Liability Company
- Other: _____

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides:

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

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.

- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

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

Date: _____

Proper Name of Inspector: _____

Signature: _____

Print Name: _____

Title: _____

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Work under this Contract.)

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

One of the two boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Agreement for Project Inspection Services ("Agreement"):

[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.] Inspector's employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Inspector's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Inspector for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 (c))

Date: _____
District Representative's Name and Title: _____
Signature: _____

The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Inspector's services under this Agreement and Inspector certifies its compliance with these provisions as follows: *"Inspector certifies that the Inspector has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Inspector's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Inspector, who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto."*

Inspector's services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:

- _____ The installation of a physical barrier at the worksite to limit contact with pupils.

- _____ Continual supervision and monitoring of all Inspector's on-site employees of Inspector by an employee of Inspector, _____, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

- _____ Surveillance of Employees by District personnel. **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]**
Date: _____
District Representative's Name and Title: _____
Signature: _____

Megan's Law (Sex Offenders). I have verified and will continue to verify that the employees of Inspector that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

[MUST BE COMPLETED BY INSPECTOR'S AUTHORIZED REPRESENTATIVE.] I am a representative of the Inspector entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Inspector.

Date: _____
Name of Inspector or Company: _____
Signature: _____
Print Name and Title: _____

Exhibit A

[IR A-7 AND THE IR A-8]: