

**INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES  
INSPECTOR OF RECORD**

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the 1st day of January, 2020 by and between the Calexico Unified School District, ("District") and Jesse Douglas Hartline, ("Consultant"), (together, "Parties").

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** Consultant shall provide Division of the State Architect ("DSA") certified project inspector services as further described in **Exhibit A**, attached hereto and incorporated herein by this reference ("Services"), for the District's Measure V construction projects as selected/needed by the District.
2. **Term.** Consultant shall commence providing services under this Agreement on January 1, 2020 and will diligently perform as required and complete performance by December 31, 2021, unless this Agreement is terminated and/or otherwise cancelled prior to that time.
3. **Submittal of Documents.** Consultant shall not commence the Services under this Agreement until Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<u>  X  </u>	Signed Agreement
<u>  X  </u>	Workers' Compensation Certification
<u>  X  </u>	Fingerprinting/Criminal Background Investigation Certification
<u>  X  </u>	Insurance Certificates and Endorsements
<u>  X  </u>	W-9 Form
<u>      </u>	Other: _____

4. **Compensation.** District agrees to pay Consultant for services satisfactorily rendered pursuant to this Agreement a total fee **not to exceed** Eighty Dollars (\$80) per hour. District shall pay Consultant according to the following terms and conditions:
  - 4.1. Payment for the Services shall be made for all undisputed amounts based upon the delivery of the work product as determined by the District. Payment shall be made within thirty (30) days after Consultant submits an invoice to the District for Services actually completed and after the District's written approval of the Services, or the portion of the Services for which payment is to be made.
  - 4.2. The Services shall be performed at the hourly billing rates **not to exceed** Eighty Dollars (\$80) an hour. The itemized invoice shall reflect the hours spent by Consultant in performing its Services pursuant to this Agreement. Itemized invoice shall reflect the hours spent by Consultant in performing its Services pursuant to this Agreement and a description of the Services performed.
  - 4.3. If Consultant works at more than one site, Consultant shall invoice for each site separately.
  - 4.4. District will withhold 2% of each billing until the Division of the State Architect certification is received for the entire project.
5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing services for District.

6. **Materials.** Consultant 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.
7. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees. In the performance of the work herein contemplated, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.
8. **Performance of Services.**
  - 8.1. **Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant'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.

Consultant shall carefully study and compare all documents, findings, and other instructions and shall at once report to District, in writing, any error, inconsistency, or omission that Consultant or its employees may discover. Consultant shall have responsibility for discovery of errors, inconsistencies, or omissions.
  - 8.2. **Meetings.** Consultant and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.
  - 8.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
  - 8.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.
9. **Originality of Services.** Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.

10. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.
11. **Disputes.** In the event of a dispute between the parties as to performance of the Services, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute in good faith. Pending resolution of the dispute, Consultant agrees it will neither rescind the Agreement nor stop the performance of the Services, but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute. Disputes may be determined by mediation if mutually agreeable, otherwise by litigation. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Consultant shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Consultant's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Consultant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

## 12. Termination.

- 12.1. **For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by Consultant or no later than three (3) calendar days after the day of mailing, whichever is sooner.
- 12.2. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
- 12.2.1. material violation of this Agreement by Consultant; or
  - 12.2.2. any act by Consultant exposing the District to liability to others for personal injury or property damage.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another Consultant. If the expense, fees, and/or costs to the District exceed the cost of

providing the service pursuant to this Agreement, Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

13. **Indemnification.** To the furthest extent permitted by California law, Consultant shall indemnify and hold harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant. Consultant shall, to the furthest extent permitted by California law, defend the Indemnified Parties at Consultant's own expense, from any and all Claim(s) and allegations relating thereto with counsel approved by District where such approval is not to be unreasonably withheld.

14. **Insurance.**

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

Type of Coverage	Minimum Requirement
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	\$ 1,000,000 \$ 1,000,000
<b>Automobile Liability Insurance - Any Auto</b> Each Occurrence General Aggregate	\$ 500,000 \$ 1,000,000
<b>Professional Liability</b>	\$1,000,000
<b>Workers' Compensation</b>	Statutory Limits
<b>Employer's Liability</b>	\$ 1,000,000

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

14.1.2. **Workers' Compensation and Employer's Liability Insurance.** Workers' Compensation Insurance and Employer's Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

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

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

14.2.1. 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."

14.2.2. 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.

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

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

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

15. **Assignment.** The obligations of Consultant pursuant to this Agreement shall not be assigned by Consultant.

16. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If Consultant observes that any of the Services required by this Agreement are at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Consultant's receipt of a written termination notice from the District.

16.1. **LABOR CODE REQUIREMENTS:** To the extent applicable, Consultant shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1 - 5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with the District.

16.1.1. **Registration:** If applicable, before a public works contract can be awarded, Consultant and its subcontractor(s) shall be registered with the Department of

Industrial Relations in accordance with Labor Code section 1771.1, and, at least one week before commencing work, Consultant shall provide to the District the name and DIR registration number for Consultant and any applicable subcontractor.

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

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

17. **Certificates/Permits/Licenses/Registration.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this Agreement.
18. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
19. **Anti-Discrimination.** Consultant herein agrees to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246; and all administrative rules and regulations found to be applicable to Consultant and all of its subcontractors. In addition, Consultant agrees to require like compliance by all of its subcontractor(s).
20. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing of any portion of the Services.
21. **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 three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises ("DVBE"). In accordance therewith, Consultant must submit, upon request by the District, appropriate documentation to the District identifying the steps Consultant has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
22. **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.
23. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:

- 23.1. Requesting that District employee(s) evaluate Consultant and Consultant’s employees and subcontractors and each of their performance.
- 23.2. Announced and unannounced observance of Consultant, Consultant’s employee(s), and/or subcontractor(s).

24. **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.

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

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

**District:**

Calexico Unified School District  
 901 Andrade Ave, Calexico, CA 92231  
 Fax: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 ATTN: \_\_\_\_\_

**Consultant:**

Jesse Douglas Hartline  
 \_\_\_\_\_, CA 9\_\_\_\_\_  
 Fax: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 ATTN: \_\_\_\_\_

Any notice personally given or sent by facsimile transmission or electronic mail 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. Any notice given by mail shall be effective three (3) calendar days after deposit in the United States mail.

27. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

28. **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.

29. **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.
30. **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.
31. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
32. **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.
33. **Attorney's Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
34. **Tolling of District's Claims.** Consultant agrees to toll all statutes of limitations for District's assertion of claims against Consultant that arise out of, pertain to, or relate to contractors' or subcontractors' claims against District involving Consultant's services under this Agreement, until the contractors' or subcontractors' claims are finally resolved.
35. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
36. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
37. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.
38. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
39. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

[SIGNATURES ON NEXT PAGE]

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

Dated: \_\_\_\_\_, 20\_\_

Dated: \_\_\_\_\_, 20\_\_

**Calexico Unified School District**

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

**Information regarding Consultant:**

License No.: \_\_\_\_\_

\_\_\_\_\_:

Registration No.: \_\_\_\_\_

Employer Identification and/or  
Social Security Number

Address: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Type of Business Entity:

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

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

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

**1. ACCEPTED INDUSTRY PRACTICES, COMPLIANCE WITH ALL LAWS**

The Consultant ("IOR") shall follow accepted industry practices and comply with all applicable federal, state and local laws, regulations, and ordinances applicable to the work on the Project ("Work").

**2. TITLE 24 CALIFORNIA CODE OF REGULATIONS, DISTRICT STANDARDS, DIVISION OF THE STATE ARCHITECT**

The IOR shall ensure that the Project Contractor's ("Contractor") installation of Work is constructed in accordance with Title 24 California Code of Regulations, the District standards and all other applicable requirements. Verifications shall include, but not be limited to, welding connections, electrical connections and material utilized in conformance with construction documents. The inspection shall be according to the DSA inspection rules and regulations.

**3. CONTINUOUS INSPECTION**

The IOR shall perform continuous inspection of the Project during all stages of construction. Such inspection shall be conducted based on personal knowledge of the construction and shall ensure that the approved plans and specifications are completely executed. Continuous inspection means complete inspection of every part of the Work. Work such as concrete or brick work that can be inspected only as it is placed shall require the constant presence of the IOR. Other types of Work that can be completely inspected after the Work is installed may be carried on while the IOR is not present. In no case shall the IOR have or assume any duties that will prevent the IOR from providing continuous inspection.

**4. DEFECTIVE WORK**

If the IOR determines that any portion of the Work is defective and such defect requires that portion of the Work to be rejected, the IOR shall immediately report said defective Work to the Architect, the Construction Manager (if applicable), and the District. The IOR's initial report regarding such defective Work may be either verbal or in writing, whichever form is deemed more appropriate by the IOR under the circumstances. However, if such initial report is verbal, the IOR shall confirm said verbal report in writing within one (1) calendar day.

**5. IOR'S FAMILIARITY WITH PROJECT AGREEMENTS**

The IOR shall become sufficiently acquainted with the Project and the agreements between the District and the Architect, Construction Manager (if applicable), and Contractor, to allow for the IOR's effective and productive interface between the District, the Architect, the Construction Manager (if applicable), the Contractor, and governmental inspectors by government inspectors including but not limited to those government inspectors referred to in section 9 herein.

## **6. JOB SITE MEETINGS**

The IOR shall, as directed by the Architect, the District, or the Construction Manager (if applicable), attend meetings held at the Project site or the District Facilities or other location identified to the IOR by the District. Such meetings shall include, but are not limited to, billing meetings, specification reviews, coordination, and progress.

## **7. IOR'S RELATIONSHIP WITH ARCHITECT**

The IOR shall consult with and work under the general direction of the Architect during the construction and installation phase of the Project. Prior to commencement of Work, the IOR shall cooperate with the Architect to develop an Inspection Plan for the Project. The IOR shall obtain from the Architect additional details or information when required at the Project for the proper execution of the Project. The IOR shall assist in the review of Contractor's submittals. The IOR shall review the plans and specifications. All inconsistencies or seeming errors noted by the IOR in the plans and specifications shall be immediately reported by the IOR, with written confirmation immediately, to the Architect, with a copy to the District and Construction Manager (if applicable), for the Architect's interpretation and instructions relating thereto. In no case, however, shall the instruction of the Architect be construed by the IOR to cause Work to be done that is not in conformity with approved plans, specifications and change orders. Interpretations received by the IOR from the Architect that cause deviations from the approved plans, specifications and change orders shall be referred by the IOR to the Architect responsible for preparation of change orders to cover the required Work.

## **8. IOR'S RELATIONSHIP WITH CONTRACTOR**

The IOR shall be a communication liaison between the Contractor and Architect for inquiries regarding the Project, including Construction Document interpretation. The IOR shall communicate with Contractor or subcontractors as necessary to document such inquiries, and shall immediately forward them to Architect. Any final decisions shall be made by District, or Architect as authorized by District.

## **9. GOVERNMENTAL AGENCIES HAVING JURISDICTION**

9.1 **Site Visits by Governmental Inspectors.** If any governmental inspectors representing local, state or federal agencies have jurisdiction over the Project should visit the Project site, the IOR shall accompany such governmental inspectors during their visits to the Project, and record in writing and report to the Construction Manager (if applicable), the Architect and the District the results of such governmental inspections.

9.2 **Notifications to Government Agencies and Inspectors.** The IOR shall notify the governmental agencies and inspectors with jurisdiction over the Project when the Work is started on the Project; at least forty-eight (48) hours in advance of completion of foundation trenches; when the Work is ready for footing forms; at least forty-eight (48) hours in advance of the first pour of concrete; and when the Work is suspended for a period of more than two (2) weeks.

## **10. IOR'S JOB FILES**

The IOR shall maintain orderly job files at the Project site that include correspondence; reports of Project site conferences; minutes of job site meetings; shop drawings; and reproductions of the original Construction Contract of the Contractor ("Construction Contract"), including all addenda, change orders, and supplementary drawings and

specifications issued subsequent to the award of the Construction Contract. The IOR shall keep a file of approved plans and specifications, including all approved addenda and change orders, on the job site at all times, and shall immediately return any unapproved documents to the Architect for proper action. The IOR, as a condition of IOR's contract, shall have and maintain on the job at all times all codes and documents referred to in the plans and specifications for the Project.

## **11. IOR'S DAILY RECORDS**

The IOR shall maintain daily inspector reports and job files that are thorough, complete and orderly and deemed by the IOR to be accurate and qualitative. Such reports shall record hours on the Project site; weather conditions; construction procedures, where performed and any deviations therefrom; construction equipment and vehicles utilized; manpower assigned by the Contractor and subcontractors; equipment and materials delivered to the site, including IOR's inspection thereof within forty-eight (48) hours of Contractor's delivery to the job site and IOR's determination that they meet submittal and specification requirements; daily activities; verbal instructions and clarifications of the Work given to the Contractor; decisions that either clarify or deviate from the contract documents; general observations and specific observations in detail as in the case of Project test procedures and results; occurrences or conditions that might affect the construction budget or schedule; any Work or material in place that does not correspond with the drawings or specifications, as well as resulting action taken; substantive telephone calls, including statements or commitments made during the call; and names of all visitors to the Project site, including agency representation and agents of the District. Said reports and/or job files shall be made available to the Architect, the Construction Manager (if applicable), and the District upon request. Failure to provide these Daily Records shall constitute a material breach of contract and may be cause for termination of the Agreement between the District and the IOR.

## **12. IOR'S VERIFIED and SEMI-MONTHLY REPORTS**

12.1 The IOR shall keep the District thoroughly informed as to the progress of the Work by submitting reports required by Title 24 as follows:

12.1.1 Copies of verified reports required by Title 24 CCR shall be submitted to the District within five (5) business days of the end of the report period and within five (5) days of final acceptance for the final verified report.

12.1.2 Copies of semi-monthly reports required by Title 24 CCR shall be submitted to the District within two (2) business days of the close of the report period. These reports shall include the following information as a minimum:

12.1.2.1 A brief description of the Work in progress by each trade or Contractor with an estimate of the percentage completed to date.

12.1.2.2 Notation of progress or other project-related meetings conducted on site.

12.1.2.3 Notice of official visitors to the site to include the dates of their visit and a brief description of their visit.

12.1.2.4 Notation of all approved submittal, change orders, bulletins, and requests for information or clarification received by the Contractor from the Architect or project engineer.

- 12.1.2.5 Notation of all correction notices or notices of non-compliance issued to the Contractor (include a copy of such notices with the report).
- 12.1.2.6 Notification of any situation or development that may have an adverse impact on construction activities or delays in material delivery.
- 12.1.2.7 Notation of the average number of workers and foremen on site each day for the report period.
- 12.1.2.8 Notice of any delays due to adverse weather conditions including a brief description of the circumstances and any Work that was impeded.
- 12.1.2.9 Notation of any deviation from the Contractor's approved construction schedule.
- 12.1.2.10 Certification that the construction activities and materials comply with approved project documents unless otherwise specifically noted in the report.

### **13. IOR'S RECORDS OF CONSTRUCTION PROCEDURES**

- 13.1 **Maintain all Records.** The IOR shall maintain all of IOR'S inspection records of construction procedures on the Project jobsite until the completion of the Work. The IOR shall maintain a record of phases of construction procedures, if such construction procedures are required.

### **14. TESTS**

- 14.1 **Advice in Advance, Observe and Record.** The IOR shall advise the Architect, the Construction Manager (if applicable), and the District in advance, verbally and in writing, of the schedules of tests and shall observe the tests at the Project site that are required by the Construction Contract. The IOR shall record in writing all necessary details relative to the test procedures and results.
- 14.2 **Testing Services for Observation.** The IOR shall observe and record all testing services.

### **15. CERTIFICATION DOCUMENTATION**

The IOR shall ensure that all required certification documentation relative to the Project is received in a timely manner by the Construction Manager (if applicable), and the District.

### **16. CONTRACTOR'S DEVIATIONS IN THE WORK**

Whenever the IOR observes that the Contractor is performing any portion of the Project in deviation from the approved plans, specifications or change orders or in violation of any local, state or federal codes, or contrary to approved revisions to any of the above, the IOR shall, if such deviation or violation is not immediately corrected by the Contractor when brought to the attention of the Contractor by the IOR, immediately direct the Contractor in writing, while simultaneously notifying the Architect, the Construction Manager (if applicable), and the District, to cease installation of that nonconforming portion of the Project, pending further decision by the Architect and the District; and shall, in all cases, whether or not said deviations or violations are immediately corrected by the

Contractor, make a written record of same. The IOR shall deliver copies of the writings referred to in this paragraph to the District within twenty-four (24) hours of IOR'S origination of the writings.

**17. FAILURE TO NOTIFY THE ARCHITECT, THE CONSTRUCTION MANAGER, AND THE DISTRICT**

IOR's failure to notify the Architect, the Construction Manager (if applicable), and the District of Work not in compliance with the plans and specifications shall constitute a material breach of contract and may be cause for termination of the Agreement between the District and the IOR.

**18. CONSTRUCTION SCHEDULE, POTENTIAL DELAYS IN COMPLETION**

The IOR shall be alert to the construction schedule and to any conditions that may cause delay in completion of the Project. Upon observing such conditions, the IOR shall report the same immediately and, within one (1) calendar day of observing such conditions, confirm the same in writing to the Architect, the Construction Manager (if applicable), and the District.

**19. PAYMENT REQUESTS**

The IOR shall review the Contractor's pay requests prior to the issuance of Architect's and Contractor's certificate of payment to the Construction Manager (if applicable) and the District and indicate whether amounts claimed by the Contractor are, in the IOR's opinion, correct. The IOR'S approval of pay requests shall be shown by signature of the IOR on the pay request.

**20. CONSTRUCTION AT EXISTING FACILITIES**

The IOR shall, where existing facilities are to be maintained in operation during the Project, assist as a liaison between the Construction Manager (if applicable), the District and the Contractor in order to prevent materially adverse disruption to the District's operations at or near the Project site.

**21. OCCUPANCY OF FACILITY**

The IOR shall, in the event that the District should occupy the Project or any portion thereof prior to completion of the Project by the Contractor, assist in the development of a punch list agreement between the District, the Construction Manager (if applicable), the Architect and the Contractor as to incomplete items and the general conditions of areas to be occupied by the District prior to completion of the Project by the Contractor.

**22. AS-BUILT DRAWINGS**

The IOR shall review and verify the adequacy and accuracy of required As-Built drawings prepared by the Contractor, as set forth in the Construction Contract, and determine that such As-Built drawings are updated by the Contractor on a monthly basis prior to processing of Contractor's monthly payment request.

**23. PUNCH LIST ITEMS**

The IOR shall, after completion of the project or completion of a portion thereof, check each punch list item to ensure that it is corrected in accordance with the Construction Contract, plans and specifications.

[END OF EXHIBIT]

**WORKERS' COMPENSATION CERTIFICATION**

Labor Code Section 3700 in relevant part provides:

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

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

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

Date: \_\_\_\_\_

Name of Consultant: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name and 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 Services under this Agreement.)

**FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION**

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Independent Consultant Agreement for Professional Services ("Agreement"):

- Consultant'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 Consultant's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Consultant 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: \_\_\_\_\_

District Representative's Signature: \_\_\_\_\_

- The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Consultant's services under this Agreement and Consultant certifies its compliance with these provisions as follows: *"Consultant certifies that the Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Consultant'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 Consultant, 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."*

- Consultant'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 Consultant's on-site employees of Consultant by an employee of Consultant, \_\_\_\_\_, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.
- Surveillance of Employees by District personnel.

Date: \_\_\_\_\_

District Representative's Name and Title: \_\_\_\_\_

District Representative's Signature: \_\_\_\_\_

I am a representative of the Consultant 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 Consultant.

Date: \_\_\_\_\_

Name of Consultant: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_