

EXHIBIT 1

AGREEMENT FOR CONSULTING SERVICES

ALHAMBRA UNIFIED SCHOOL DISTRICT

WITH

FOR

Architectural and/or Engineering Services

_____, 2018

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AGREEMENT FOR CONSULTING SERVICES

This Agreement for Consulting Services is made as of _____, 2018, between the Alhambra Unified District, a California public school district, ("District") and _____ ("Consultant") (collectively "Parties"), for the following project ("Project"):

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

Article 1. Definitions

- 1.1. In addition to the definitions above, the following definitions of words or phrases shall apply when used in this Agreement, including all Exhibits:
 - 1.1.1. **Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
 - 1.1.2. **As-Built Drawings ("As-Builts"):** Any document prepared and submitted by District Contractor(s) that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by Construction Change Documents and change orders, and detailed by the District's construction contractor(s) on a Conforming Set.
 - 1.1.3. **Bid Set:** The plans, drawings, and specifications at the end of the Construction Documents Phase that the Division of the State Architect ("DSA") has approved and that the District can use to go out to bid for construction of the Project.
 - 1.1.4. **Conforming Set:** The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase. The Consultant shall ensure that DSA has approved all revisions to the Bid Set that are incorporated onto the Conforming Set and for which DSA approval is required.
 - 1.1.5. **Construction Budget:** The total amount of funds indicated by the District for the entire Project plus all other costs, including design, construction, administration, and financing. In addition to the definitions above, the following definitions of words or phrases shall apply when used in this Agreement, including all Exhibits.
 - 1.1.7. **Construction Change Documents ("CCD"):** The documentation of changes to the DSA-approved construction documents.
 - 1.1.8. **Construction Cost Budget:** The total cost to District of all elements of the Project designed or specified by the Consultant, as adjusted at the end of each design phase in accordance with this Agreement. The Construction Cost Budget does not include the compensation of the Consultant and the Consultant's Consultants, the cost of land, rights-of-way, financing or other costs which are the responsibility of the District, including construction management.

- 1.1.9. **Construction Manager:** The District’s representative on the Project if the District retains a construction manager, project manager, or owner’s representative.
- 1.1.10. **Contractor:** One or more licensed contractors under contract with the District for construction of all or a portion of the Project.
- 1.1.11. **Consultant(s):** Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s).
- 1.1.12. **District:** The Denair Unified School District.
- 1.1.13. **DSA:** The Division of the State Architect.
- 1.1.14. **Extra Services:** District-authorized services outside of the scope in **Exhibit “A”** or District-authorized reimbursables not included in Consultant’s Fee.
- 1.1.15. **Laboratory of Record:** The District-designated laboratory(ies) for testing of concrete, soils, materials, and other required testing.
- 1.1.16. **Project:** _____.
- 1.1.17. **Record Drawings:** A final set of drawings prepared by the Consultant that incorporates all changes from all As-Builts, sketches, details, and clarifications.
- 1.1.18. **Service(s):** All labor, materials, supervision, services, tasks, and work that the Consultant is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of the Project.
- 1.1.19. **Visually Verify:** To verify to the fullest extent possible by physical inspection and reasonable investigation and without any destructive action. **Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.

Article 2. Scope, Responsibilities, and Services of Consultant

- 2.1. Consultant shall render the Services described in **Exhibit “A,”** commencing with receipt of a written Notice to Proceed signed by the District representative. Consultant’s Services will be completed in accordance with the schedule attached as **Exhibit “C.”**
- 2.2. Consultant shall provide Services that shall use due professional care to comply with professional architectural and engineering standards, including the standard of care applicable to architects and/or engineers designing public school facilities and applicable requirements of federal, state, and local law, including, but not limited to, the requirements of the California Business and Professions Code, the California Education Code, and the California Code of Regulations. All persons providing professional services hereunder shall be properly licensed as required by California law.
- 2.3. The District intends to award the Project to Contractor(s) pursuant to an informal bid process. District reserves its right to use alternative delivery methods and the Consultant’s scope of work may be adjusted accordingly.

- 2.4. Consultant acknowledges that all California public school districts are obligated to develop and implement the following storm water requirements, and Consultant shall provide the design for the same, without limitation:
- 2.4.1. A municipal Separate Storm Sewer System (“MS4”). An MS4 is a system of conveyances used to collect and/or convey storm water, including, without limitation, catch basins, curbs, gutters, ditches, man-made channels, and storm drains.
- 2.4.2. A Storm Water Pollution Prevention Plan (“SWPPP”) that contains specific best management practices (“BMPs”) and establishes numeric effluent limitations at:
- 2.4.2.1. Sites where the District engages in maintenance (e.g., fueling, cleaning, repairing) of transportation activities.
- 2.4.2.2. Construction sites where:
- 2.4.2.2.1. one (1) or more acres of soil will be disturbed, or
- 2.4.2.2.2. the project is part of a larger common plan of development that disturbs one (1) or more acres of soil.
- 2.4.3. Consultant shall conform its design work to the District’s storm water requirements indicated above, that are approved by the District and applicable to the Project, at no additional cost to the District. In addition, as required Consultant shall develop a grading and drainage plan and a site plan from architectural information showing a final development of the site. This drawing will also include a horizontal and vertical control plan and a utility infrastructure plan. The Services described in this subparagraph shall be provided by a professional civil engineer who contracts with or is an employee of the Consultant.
- 2.5. Consultant shall contract for or employ at Consultant’s expense, Consultant(s) to the extent deemed necessary for completion of the Project including, but not limited to: architects; mechanical, electrical, information technology, structural and civil engineers; landscapers; and interior designers, licensed as such by the State of California as part of the Basic Services under this Agreement. The names of Consultant(s) shall be submitted to the District for approval prior to commencement of Services, as indicated below. The District reserves the right to reject Consultant’s use of any particular Consultant. Nothing in the foregoing procedure shall create any contractual relationship between the District and any Consultant employed by the Consultant under terms of the Agreement. Consultant shall require each of the Consultants retained by it to execute agreements with standard of care and indemnity provisions commensurate with this Agreement, but Consultant shall remain solely responsible and liable to District for all matters covered by this Agreement.
- 2.6. Consultant shall coordinate with District personnel or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work related to the Project. This shall include, without limitation, coordination with State labor compliance, if any. If the Consultant employs Consultant(s), the Consultant shall ensure that its contract(s) with its Consultant(s) include language notifying the Consultant(s) of State labor compliance, if any.

- 2.7. Consultant shall identify the regulatory agencies that have jurisdiction over essential building and design elements and coordinate with and implement the requirements of the regulatory agencies, including, without limitation, the California Department of Education, the Office of Public School Construction, the Department of General Services, DSA, including DSA Fire/Life Safety, DSA Access Compliance Section, DSA Structural Safety Section, the State Fire Marshal and any regulatory office or agency that has authority for review and supervision of school district construction projects.
 - 2.7.1. If the Project is subject to DSA jurisdiction, then Consultant, and its Consultants, if any, shall comply with all the applicable DSA requirements.
 - 2.7.1.1. Form DSA IR A-6, Construction Change Document Submittal and Approval Process.
 - 2.7.1.2. Form DSA IR A-18: Use of Construction Documents Prepared by Other Professionals.
 - 2.7.1.3. Form DSA IR A-24, Construction Phase Duties of the School District, Contractor and Design Professional.
 - 2.7.1.4. Form DSA PR 07-01: Pre-Check Approval Process.
 - 2.7.1.5. Form DSA PR 07-02: Over-The-Counter Review of Projects Using Pre-Check Approved Design.
 - 2.7.1.6. Form DSA PR 13-01, Construction Oversight Process Procedure.
 - 2.7.1.6.1. Each of Consultant’s duties as provided in the Construction Oversight Process Procedure shall be performed timely so as not to result in any delay to the Project.
 - 2.7.1.7. Form DSA PR 13-02, Project Certification Process.
- 2.8. Consultant shall provide Services as required to obtain any local, state and/or federal agencies’ approval for on-site and off-site work related to the Project including review by regulatory agencies having jurisdiction over the Project.
- 2.9. Consultant shall direct and monitor the work of the District’s DSA project inspector(s) (“Project Inspector(s)”) and the Laboratory of Record. Consultant shall provide code required supervision of special inspectors not provided by the Laboratory of Record.
- 2.10. Consultant shall give efficient supervision to Services, using its best skill and attention. Consultant shall carefully study and compare all contract documents, drawings, specifications, and other instructions (“Contract Documents”) and shall at once report to District, Construction Manager, and Contractor, any error, inconsistency, or omission that Consultant or its employees may discover, in writing, with a copy to District's Project Inspector(s). Consultant shall have responsibility for discovery of errors, inconsistencies, or omissions.
- 2.11. Consultant recognizes that the District may obtain the services of a Construction Manager and that Consultant may have to assume certain coordination and management responsibilities, including tracking Requests for Information (“RFI”), providing RFI responses, and leading all coordination meetings between the District, Project Inspectors, and Contractors on the Project. The District reserves the right to

retain the services of a Construction Manager at any time. The Construction Manager, if any, shall be authorized to give Consultant Services authorizations and issue written approvals and notices to proceed on behalf of District. The District reserves the right to designate a different Construction Manager at any time. Any task, including, but not limited to, reviews or approvals that the District may perform pursuant to this Agreement may be performed by the Construction Manager, unless that task indicates it shall be performed by the Governing Board of the District. In addition, the District may have a constructability review of Consultant's design documents. Consultant shall conform any design documents to the constructability review as part of the Services under this Agreement and shall not be entitled to any compensation as Extra Services for this activity.

- 2.12. Consultant shall provide computer-generated pictures downloaded to computer files, updated as requested by the District, that the District may use on its website.
- 2.13. As part of the basic Services pursuant to this Agreement, Consultant is not responsible for:
 - 2.13.1. Ground contamination or hazardous material analysis.
 - 2.13.2. Any asbestos and/or lead testing, design or abatement; however, it shall coordinate and integrate its work with any such information provided by District.
 - 2.13.3. Compliance with the California Environmental Quality Act ("CEQA"), except that Consultant agrees to coordinate its work with that of any CEQA consultants retained by the District, to provide current elevations and schematic drawings for use in CEQA compliance documents, and to incorporate any mitigation measures adopted by the District into the Project design at no additional cost to the District.
 - 2.13.4. Historical significance report.
 - 2.13.5. Soils investigation.
 - 2.13.6. Geotechnical hazard report, except as indicated in **Exhibit "A."**

Article 3. Consultant Staff

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

Principal In Charge: _____

Project Director: _____

Project Architect and/or Engineer(s): _____

Project Architect and/or Engineer(s): _____

Other: _____

Major Consultants:

Electrical: _____
Network: _____
Technology: _____
Mechanical: _____
Plumbing: _____
Structural: _____
Civil: _____
Landscape: _____
Cost Estimator: _____
Other: _____

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

Article 4. Schedule of Services

Consultant shall commence Services under this Agreement upon receipt of a written Notice to Proceed and shall prosecute the Services diligently as described in **Exhibit "A,"** to proceed with and complete the Services in compliance with the schedule in **Exhibit "C."** Time is of the essence and failure of Consultant to perform Services on time as specified in this Agreement is a material breach of this Agreement. It shall not be a material breach if a delay is beyond the Consultant's or Consultant's Consultant(s)' reasonable control.

Article 5. Construction Cost Budget

- 5.1. Consultant and District shall work together to establish a Construction Cost Budget and Project scope. In accordance with **Exhibit "A,"** the Consultant shall have the responsibility to develop, review, and reconcile the Construction Cost Budget for the District at the completion of each design phase. The District and Construction Manager shall also have responsibility to develop, review, and reconcile the Construction Cost Budget with the Consultant.
- 5.2. Consultant shall complete all Services as described in Exhibit "A," including all plans, designs, drawings, specifications and other Contract Documents, so that the cost to construct the work designed by the Consultant will not exceed the Construction Cost Budget, as adjusted subsequently with the District's written approval. Consultant shall maintain cost controls throughout the Project to deliver the Project within the Construction Cost Budget.
- 5.3. The District may, in its sole discretion, do one, or a combination, of the following if any of the events in Article 5.4 occur:
 - 5.3.1. Give Consultant written approval on an agreed adjustment to the Construction Cost Budget.
 - 5.3.2. Authorize Consultant to re-negotiate, when appropriate, and/or re-bid the Project within three (3) months' time of receipt of bids (exclusive of District and other agencies' review time) at no additional cost to the District.
 - 5.3.3. Terminate this Agreement if the Project is abandoned by the District, without further obligation by either party.
 - 5.3.4. Within three (3) months' time of receipt of bids, instruct Consultant to revise the drawings and specifications (in scope and quality as approved by the District) to bring the Project within the Construction Cost Budget for re-bidding at no additional cost to the District.
- 5.4. If any of the following events occur, the District may exercise any one, or any combination, of the actions set forth in Article 5.3 above:
 - 5.4.1. The lowest responsive base bid received is in excess of five percent (5%) of the Construction Cost Budget; or
 - 5.4.2. If the combined total of base bid and all additive alternates come in ten percent (10%) or more under the Construction Cost Budget; or
 - 5.4.3. If the Construction Cost Budget increases in phases subsequent to the Schematic Design Phase due to reasonably foreseeable changes in the condition of the construction market in the county in which the District is located, in so far as these have not been caused by Acts of God, earthquakes, strikes, war, or energy shortages due to uncontrollable events in the world economy.

Article 6. Fee and Method of Payment

- 6.1. The District shall pay Consultant for all Services contracted for under this Agreement an amount equal to the following ("Fee"):

An amount equal to _____ Dollars (\$ _____) based on the rates set forth in **Exhibit "D."**

- 6.2. The District shall pay Consultant the Fee pursuant to the provisions of **Exhibit "D."**
- 6.3. Consultant shall bill its work under this Agreement in accordance with **Exhibit "D."**
- 6.4. The Consultant's Fee set forth in this Agreement shall be full compensation for all of Consultant's Services incurred in the performance hereof as indicated in **Exhibit "D."**
- 6.5. Regardless of the structure of Consultant's Fee, the Consultant's Fee may be adjusted downward if the Scope of Services of this Agreement is reduced by the District in accordance with this Agreement.

Article 7. Payment for Extra Services or Changes

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

Article 8. Ownership of Data

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

- 8.5. Following the termination of this Agreement, for any reason whatsoever, Consultant shall promptly deliver to the District upon written request and at no cost to the District the following items (hereinafter "Instruments of Service"), which the District shall have the right to utilize in any way permitted by statute:
 - 8.5.1. One (1) set of the Contract Documents, including all existing cost estimates for the Project, in hard copy, reproducible format.
 - 8.5.2. One (1) set of fixed image CADD files in DXF format of the drawings that are part of the Contract Documents.
 - 8.5.3. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, technology data and reports prepared by the Consultant under this Agreement.
 - 8.5.4. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, technology data and reports prepared by the Consultant under this Agreement.
 - 8.5.5. The obligation of Section 8.5 of this Agreement shall survive the termination of this Agreement for any reason whatsoever.
- 8.6. In the event the District changes or uses any fully or partially completed documents without Consultant's knowledge or participation or both, the District agrees to release Consultant of responsibility for such changes and shall hold Consultant harmless from and against any and all claims on account of any damages or losses to property or persons, or economic losses, arising out of that change or use, unless Consultant is found to be liable in a forum of competent jurisdiction. In the event that the District uses any fully or partially completed documents without the Consultant's full involvement, the District shall remove all title blocks and other information that might identify Consultant and its Consultants.

Article 9. Termination of Contract

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

- 9.4. Consultant has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement. Such termination shall be effective thirty (30) days after receipt of written notice from Consultant to the District. Consultant may invoice the District and the District shall pay all undisputed invoice(s) for Services performed until Consultant's notice of termination.
- 9.5. If, at any time in the progress of the Design of the Project, the Governing Board of the District determines that the Project should be terminated, Consultant, upon written notice from the District of such termination, shall immediately cease Services on the Project. The District shall pay Consultant only the fee associated with the Services provided since the last invoice that has been paid and up to the notice of termination.
- 9.6. If the District suspends the Project for more than one hundred twenty (120) consecutive days, Consultant shall be compensated for Services performed prior to notice of that suspension. When the Project is resumed, the schedule shall be adjusted and Consultant's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Consultant's Services. If the District suspends the Project for more than two (2) years, Consultant may terminate this Agreement by giving written notice.

Article 10. Indemnity/Consultant Liability

- 10.1. To the furthest extent permitted by California law, Consultant shall indemnify and hold free and harmless the District, its Governing Board, 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") that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, its officers, employees, subcontractors, consultants, or agents, including without limitation the payment of all consequential damages. Consultant shall also, to the furthest extent permitted by California law, defend the Indemnified Parties at Consultant's own expense, including attorneys' fees and costs, from any and all Claim(s) and allegations relating thereto.
- 10.2. Consultant shall pay and satisfy any judgment, award, or decree that may be rendered against the Indemnified Parties in any Claim. Consultant's obligation pursuant to Article 10.1 includes reimbursing the District for the cost of any settlement paid by the Indemnified Parties and for any and all fees and costs, including but not limited to legal fees and costs, expert witness fees, and consultant fees, incurred by the Indemnified Parties in the defense of any Claim(s), or to enforce the indemnity herein. Consultant's obligation to defend or to indemnify shall not be restricted to insurance proceeds. District shall also have the right to accept or reject any legal representation that Consultant proposes to defend the Indemnified Parties.
- 10.3. District may withhold any and all costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant from amounts owing to Consultant.

Article 11. Fingerprinting and Behavior

Pursuant to Education Code section 45125.2, the District has determined on the basis of scope of Services in this Agreement, that Consultant, its Consultants and their employees will have only limited contact with pupils. Consultant shall promptly notify the District in writing of any facts or circumstances which might reasonably lead the District to determine that contact will be more than limited as defined by Education Code section 45125.1(d).

- 11.1. No drugs, alcohol and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, or contractors are to use drugs on these sites.
- 11.2. Unacceptable and/or loud language will not be tolerated. Derogatory language toward students, staff, visitors or the public will not be allowed.

Article 12. Responsibilities of the District

- 12.1. The District shall examine the documents submitted by the Consultant and shall render decisions so as to avoid unreasonable delay in the process of the Consultant's Services.
- 12.2. The District shall verbally or in writing advise Consultant if the District becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Consultant's documents. Failure to provide such notice shall not relieve Consultant of its responsibility therefore, if any.
- 12.3. Unless the District and Consultant agree that a hazardous materials consultant shall be a Consultant of the Consultant, the District shall furnish the services of a hazardous material consultant or other consultants when such services are requested in writing by Consultant and deemed necessary by the District or are requested by the District. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to said matters, which are to be incorporated into bid documents prepared by Consultant. If the hazardous materials consultant is furnished by the District and is not a Consultant of the Consultant, the specifications shall include a note to the effect that the hazardous materials consultant's specifications are included in the Consultant's bid documents for the District's convenience and have not been prepared or reviewed by the Consultant. The note shall also direct questions about the hazardous materials consultant's specifications related to asbestos and lead paint survey and/or abatement documentation to the preparer of the hazardous materials consultant's specifications.

Article 13. Liability of District

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

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

Article 14. Nondiscrimination

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

Article 15. Insurance

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

Article 16. Covenant against Contingent Fees

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

Article 17. Entire Agreement/Modification

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

Article 18. Non-Assignment of Agreement

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

Article 19. Law, Venue

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

Article 20. Alternative Dispute Resolution

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 in writing by all Parties.

Article 21. Tolling of 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 work, until the Contractors' or subcontractors' claims are finally resolved.

Article 22. Attorneys' Fees

In the event either party shall bring any action or legal proceeding for damages for any alleged breach of any provision of or performance under this Agreement, to terminate this Agreement, or to enforce, protect or establish any term or covenant of this Agreement or right or remedy of either party, the prevailing party shall be entitled to recover, as a part of the action or proceeding, reasonable attorneys' fees and court costs, including consultants' fees, attorneys' fees and costs for appeal, as may be fixed by the court. The term "prevailing party" shall mean the party who received substantially the relief requested, whether by settlement, dismissal, summary judgment, judgment, or otherwise.

Article 23. Severability

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

Article 24. Employment Status

- 24.1. Consultant shall, during the entire term of Agreement, be an independent contractor and nothing in this Agreement is intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the District to exercise discretion or control over the professional manner in which Consultant performs the Services that are the subject matter of this Agreement; provided always, however, that the Services to be provided by Consultant shall be provided in a manner consistent with all applicable standards and regulations governing such Services.

- 24.2. Consultant understands and agrees that Consultant's personnel are not and will not be eligible for membership in or any benefits from any District group plan for hospital, surgical or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a District employee.
- 24.3. Should the District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Consultant, or any employee or Consultant of Consultant, is an employee of the District for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Consultant which can be applied against this liability). The District shall then forward those amounts to the relevant taxing authority.
- 24.4. Should a relevant taxing authority determine a liability for past services performed by Consultant for the District, upon notification of such fact by the District, Consultant shall promptly remit such amount due or arrange with the District to have the amount due withheld from future payments to Consultant under this Agreement (again, offsetting any amounts already paid by Consultant which can be applied as a credit against such liability).
- 24.5. A determination of employment status pursuant to the preceding two (2) paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Consultant shall not be considered an employee of the District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Consultant is an employee for any other purpose, then Consultant agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Consultant or its employees of Consultants was not an employee.
- 24.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 25. Certificate of Consultant

- 25.1. Consultant certifies that the Consultant is properly certified or licensed under the laws and regulations of the State of California to provide the professional services that it has herein agreed to perform.
- 25.2. Consultant certifies that it is aware of the provisions of the California Labor Code that require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with those provisions before commencing the performance of the Services of this Agreement.
- 25.3. Consultant certifies that it is aware of the provisions of California Labor Code and California Code of Regulations that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Since the Consultant is performing Services as part of a "public works" or "maintenance" project, and since the total compensation is one thousand dollars (\$1,000) or more, the Consultant agrees to fully comply with and to

require its Consultant(s) to fully comply with all requirements of the Prevailing Wage Laws.

Article 26. Cost Disclosure - Documents and Written Reports

Consultant shall be responsible for compliance with California Government Code section 7550, if the total cost of the Contract is over five thousand dollars (\$5,000).

Article 27. Notice & Communications

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

District: Alhambra Unified School District 1515 West Mission Road Alhambra, CA 91803 ATTN: Business Services	Consultant: _____ _____ _____ ATTN: _____ Email: _____ Phone: _____
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Any notice personally given shall be effective upon receipt. Any notice sent by facsimile shall be effective the day after transmission. Any notice sent by overnight delivery service shall be effective the day after delivery. Any notice given by mail shall be effective five (5) days after deposit in the United States mail.

Article 28. Disabled Veteran Business Enterprise Participation

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

Article 29. District’s Right to Audit

- 29.1. District retains the right to review and audit, and the reasonable right of access to Consultant’s and any Consultant’s premises to review and audit the Consultant’s compliance with the provisions of this Agreement (“District’s Right”). The District’s Right includes the right to inspect, photocopy, and to retain copies, outside of Consultant’s premises, of any and all Project-related records and other information with appropriate safeguards, if such retention is deemed necessary by the District in its sole discretion. The District shall keep this information confidential, as allowed by applicable law.
- 29.2. The District’s Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the District determines is necessary to discover and verify whether Consultant is in compliance with all requirements of this Agreement.
- 29.3. If there is a claim for additional compensation or for Extra Services, the District’s Right includes the right to examine books, records, documents, and any and all other

evidence and accounting procedures and practices that the District determines is necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

- 29.4. Consultant shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. Consultant shall make available to the District for review and audit all Project-related accounting records and documents and any other financial data. Upon District's request, Consultant shall submit exact duplicates of originals of all requested records to the District.
- 29.5. Consultant shall include audit provisions in any and all of its subcontracts and shall ensure that these sections are binding upon all Consultants.
- 29.6. Consultant shall comply with these provisions within fifteen (15) days of the District's written request to review and audit any or all of Consultant's Project-related records and information.

Article 30. Other Provisions

- 30.1. Consultant shall be responsible for the cost of reviewing CCDs and/or change orders caused by the Consultant's willful misconduct, recklessness, or negligent acts, errors or omissions. Without limiting Consultant's liability for indirect cost impacts, the direct costs for change orders for which Consultant shall be liable shall equal the difference between the cost of the change order and the reasonable cost of the work had that work been a part of the originally prepared Contract Documents. These amounts shall be paid by Consultant to District or the District may withhold those costs from amounts owing to Consultant.
- 30.2. Neither the District's review, approval of, nor payment for, any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Consultant shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Consultant's failure to perform any of the Services furnished under this Agreement to the standard of care of the Consultant for its Services, which shall be, at a minimum, the standard of care of architects and engineers performing similar work for California school districts in or around the same geographic area as the District.
- 30.3. Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.

Article 31. Exhibits "A" through "I" attached hereto are hereby incorporated by this reference and made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.

ALHAMBRA UNIFIED SCHOOL DISTRICT

Date: _____, 20

Date: _____, 20

By: _____

By: _____

Title: _____

Title: _____