

Professional Services Agreement

This Agreement is entered into between the Alameda Unified School District (AUSD) and River City Geoprosessionals, Inc. dba Wallace Kuhl Associates (CONTRACTOR). AUSD is authorized by Government Code Section 53060 to contract for the furnishing of special services and advice in financial, economic, account, engineering, legal, and administrative matters with persons specially trained, experienced, and competent to perform such services. CONTRACTOR is specially trained, experienced, and competent to provide such services. The parties agree as follows:

1. Services. The CONTRACTOR shall provide the following services:

Earhart Elementary School Modernization:

Provide testing and inspection services during construction. Scope of work includes inspection and testing of earthwork, foundation concrete and rebar; and concrete anchors as required by the project documents, as well as preparation of the Division of the State Architect (DSA) required documentation.

Proposal and schedule of fees attached as Exhibit A.

2. Terms. The term of this agreement shall be upon contract execution (or the day immediately following approval by an executive cabinet member if the aggregate amount CONTRACTOR contracted with AUSD is below \$109,300 in the current fiscal year; or, approval by the Board of Education if the total contract(s) exceed \$109,300, whichever is later) to August 31, 2023. The work shall be completed no later than August 31, 2023.

3. Compensation. Check one of the following boxes:

This sum shall be for full performance of this Agreement and includes fees, costs, and expenses incurred by CONTRACTOR including, but not limited to labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs, and other costs.

- 3.1.1 CONTRACTOR is providing services for a flat fee which shall not exceed \$ 25,168.40.
- 3.1.2 CONTRACTOR will be compensated at an hourly rate. Contractor will provide a maximum of hours of service at a rate of \$ _____ per hour for a total not to exceed \$ _____.
- 3.1.3 Other: _____.

AUSD shall not be liable to CONTRACTOR for any costs or expenses paid or incurred or equipment, materials or supplies used by CONTRACTOR in performing services for AUSD, except as follows: _____ which shall not exceed a total cost of \$ _____.

Payment for the work shall be made for all undisputed amounts in monthly installment payments within forty-five (45) days after the CONTRACTOR submits an invoice to AUSD for work actually completed and after AUSD's written approval of the work, or the portion of the work for which payment is to be made.

The granting of any payment by AUSD or the recipient thereof by CONTRACTOR, shall in no way lessen the liability of CONTRACTOR to correct unsatisfactory work, although the unsatisfactory character of that work may not have been apparent or detected at the time a payment was made. Work, which does not conform to the requirements of this Agreement, may be rejected by District and in that case must be replaced by CONTRACTOR without delay.

4. Strategic Alignment. Check one of the following boxes:

4.1 **School-based Agreements:** How does this service support your academic goals and increase student achievement as described in the Board-approved School Site Plan? Aligns with Implementation Plan B school site improvements.

4.2 **Central Office Agreements:** How does this service support the overall strategic goals of the department and increase student achievement? _____

5. Conduct of Contractor. CONTRACTOR will adhere to the following staff requirements and provide AUSD with evidence of staff qualifications, prior to commencing the work under this Agreement and consistent with invoicing requirements outlined in Section 9, which include:

5.1 Tuberculosis Screening. Check one of the following boxes:

5.1.1 TB Clearance will be completed through the AUSD Human Resources Department prior to starting work.

5.1.2 Agency requires all employees or subcontractors to complete TB testing and maintains current records accessible to AUSD upon request.

5.1.3 **Waiver of TB Screening.** CONTRACTOR is not required to provide evidence of TB Clearance because CONTRACTOR will not work directly with students on more than an occasional basis.

MSM (CONTRACTOR initials)

RL (District Representative initials)

5.2 Fingerprinting of Employees and Agents. The fingerprinting and criminal background investigation requirements of Education Code Section 45125.1 apply to CONTRACTOR's services under this Agreement and CONTRACTOR certifies its compliance with these provisions as follows: "CONTRACTOR has complied with the fingerprinting and criminal background investigation requirements of Education Code Section 45125.1 with respect to all CONTRACTOR's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by AUSD or acting as independent contractors of CONTRACTOR, who may have contact with AUSD 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. CONTRACTOR further certifies that it has received and reviewed fingerprint results for each of its Employees and CONTRACTOR has requested and reviewed subsequent arrest records for all Employees who may come into contact with AUSD pupils in providing services to the District under this Agreement."

- 5.2.1 Fingerprint Clearance will be completed through the AUSD Human Resources Department prior to starting work.
- 5.2.2 Agency requires all employees or subcontractors to complete fingerprinting and maintains current records accessible to AUSD upon request.
- 5.2.3 Waiver of Fingerprint Requirement. Waiver of Fingerprint Requirement. CONTRACTOR is not required to comply with section 5.2 because (check which applies):

CONTRACTOR's staff will have no contact or interactions with students outside of the immediate supervision and control of the pupil's parent or guardian or a school employee; or

CONTRACTOR'S services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility, and CONTRACTOR'S employees shall have only limited contact with students. Accordingly, the requirements of Education Code section 45125.2 shall not apply to Contractor's services under this Agreement;

MSM (CONTRACTOR initials)

RL (District Representative initials)

5.3 **Removal of CONTRACTOR's Employee(s).** In the event that AUSD, in its sole discretion, at any time during the term of this Agreement, desires the removal of any CONTRACTOR related persons, employee, representative, or agent from an AUSD school site and/or property, CONTRACTOR shall immediately upon receiving notice from AUSD of such desire, cause the removal of such person or persons.

6. **Insurance.** CONTRACTOR will provide AUSD with evidence of the following insurance coverage prior to commencing the work under this Agreement:

6.1 **Workers' Compensation Insurance. Check one of the following boxes.** If CONTRACTOR employs any person to perform work in connection with this Agreement, CONTRACTOR shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease. Check only one of the boxes below:

The CONTRACTOR is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and will provide AUSD proof of coverage before commencing the performance of the work of this Agreement. *CONTRACTOR acknowledgement Matthew S. Mozer

The CONTRACTOR does not employ anyone in the manner subject to the Workers' Compensation laws of California.

6.2 **General Liability Insurance.** CONTRACTOR shall maintain general liability insurance, including automobile coverage when applicable, with limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. The coverage shall be primary as to AUSD and shall name AUSD as an additional insured through endorsement. Inclusion of AUSD as an additional insured shall not affect AUSD's right to a claim, demand, suit or judgment made, brought or recovered against CONTRACTOR. CONTRACTOR must provide insurance documentation prior to the commencement of work.

*CONTRACTOR acknowledgement Matthew S. Mozer

6.3 Professional Liability Insurance. If CONTRACTOR is offering AUSD professional advice under this Agreement, CONTRACTOR shall maintain errors and omissions insurance or professional liability insurance with coverage limits of One Million Dollars (\$1,000,000) per claim.

6.3.1 **Waiver of Professional Liability Insurance.** CONTRACTOR is not required to maintain professional liability insurance as they are not offering professional advice. Waiver of insurance does not release CONTRACTOR from responsibility for any claim or demand.
_____ (CONTRACTOR initials)
_____ (District Representative initials)

7. Notices. All notices provided for under this Agreement shall be in writing and either personally delivered during normal business hours or sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other party at the address set forth below:

AUSD Representative:
Name: Robbie Lyng
E-mail: rlyng@alamedaunified.org
Site/Dept: Construction
Address: 2060 Challenger Drive
Alameda, CA 94501

CONTRACTOR:
Name: Matthew S. Moyneur
Title: Senior Engineer
Address: 3050 Industrial Boulevard
West Sacramento, CA 95691
Email: MMoyneur@teamues.com

Notice shall be effective when received if personally served or, if mailed, three days after mailing. Either party must give written notice of a change in address.

8. Invoicing. Invoices furnished by CONTRACTOR under this Agreement must be in a form acceptable to AUSD. All amounts paid by AUSD shall be subject to audit by AUSD.

8.1 Invoices shall be emailed directly to accountspayable@alamedaunified.org or mailed to Attn: Accounts Payable at 2060 Challenger Drive, Alameda, CA 94501. Invoice shall include but not be limited to: consultant name, consultant address, invoice date, invoice sequence number, purchase order number, name of school or department service was provided to, period of service, number of hours of service, brief description of services provided, hourly rate, and total payment requested.

9. Licenses and Permits. CONTRACTOR shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this Agreement.

10. Contractor Qualifications / Performance of Services.

10.1 Contractor Qualifications. CONTRACTOR is specially trained, experienced, competent and fully licensed to provide the Services required by this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and regulations, as they may apply.

10.2 Standard of Care. CONTRACTOR represents that CONTRACTOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of AUSD. Contractor'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.

- 11. Status of Contractor.** This is not an employment contract. CONTRACTOR, in the performance of this Agreement, shall be and act as an independent contractor. CONTRACTOR certifies that s/he performs work that is outside the usual course of the District's business. CONTRACTOR further certifies s/he is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed. CONTRACTOR understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of AUSD, and are not entitled to benefits of any kind or nature normally provided employees of AUSD and/or to which AUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. CONTRACTOR 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 CONTRACTOR's employees. In the performance of the work herein contemplated, CONTRACTOR is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work. AUSD's interest is only in the results obtained.
- 12. Assignment.** The obligations of CONTRACTOR under this Agreement shall not be assigned by CONTRACTOR without the express prior written consent of AUSD.
- 13. Anti-Discrimination.** It is the policy of AUSD that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the CONTRACTOR agrees to comply with applicable federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and AUSD policy. In addition, the CONTRACTOR agrees to require like compliance by all its subcontractors. Contractor shall not engage in unlawful discrimination in employment on the basis of actual or perceived race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, or sexual orientation.
- 14. Drug-Free/Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on AUSD property. No students, staff, visitors, CONTRACTORS, or subcontractors are to smoke or use drugs or alcohol on these sites.
- 15. Indemnification.** CONTRACTOR agrees to hold harmless, indemnify, and defend AUSD and its officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement. CONTRACTOR also agrees to hold harmless, indemnify, and defend AUSD and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to CONTRACTOR in connection with the performance of the Agreement. This provision survives termination of this Agreement.
- 16. Copyright/Trademark/Patent/Ownership.** CONTRACTOR understands and agrees that all matters produced under this Agreement shall become the property of AUSD and cannot be used without AUSD's express written permissions. AUSD shall have all rights, title, and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of AUSD. CONTRACTOR consents to use of CONTRACTOR's name in conjunction with the sale, use, performance, and distribution of the matters, for any purpose and in any medium. These matters include, without limitation, drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, artwork,

copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes, or any other original works of authorships, or other documents prepared by CONTRACTOR or its subcontractors in connection with the Services performed under this Agreement. All works shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in those works are the property of AUSD.

17. **Waiver.** No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of the Agreement.
18. **Termination.** AUSD may at any time terminate this Agreement upon written notice to CONTRACTOR. AUSD shall compensate CONTRACTOR for services satisfactorily provided through the date of termination. In addition, AUSD may terminate this Agreement for cause should CONTRACTOR fail to perform any part of this Agreement. In the event of termination for cause, AUSD may secure the required services from another contractor. If the cost to AUSD exceeds the cost of providing the services pursuant to the Agreement, CONTRACTOR shall pay the additional cost.
19. **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.
20. **AUSD's Evaluation of CONTRACTOR and CONTRACTOR's Employees and/or Subcontractors.** AUSD may evaluate the CONTRACTOR's work in any way that AUSD is entitled to do so pursuant to applicable law. The AUSD's evaluation may include, without limitation:
 - 20.1 Requesting that AUSD employee(s) evaluate the CONTRACTOR and the CONTRACTOR's employees and subcontractors and each of their performance.
 - 20.2 Announced and unannounced observance of CONTRACTOR, CONTRACTOR's employee(s), and/or subcontractor(s).
21. **Limitation of AUSD Liability.** Other than as provided in this Agreement, AUSD'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 AUSD 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.
22. **Confidentiality.** CONTRACTOR and all personnel designated by CONTRACTOR to perform under this Agreement shall maintain the confidentiality of all information received in the course of performing this Agreement. This requirement shall extend beyond the effective termination or expiration date of this Agreement. In the event CONTRACTOR receives student data protected by the Family Educational Rights and Privacy Act ("FERPA"), Provider shall abide by Education Code section 49073, including the following:
 - (a) Provider shall not use the student data provided, for an unauthorized purpose, transfer the student data to an unauthorized third party, or sell said data
 - (b) Provider shall delete or otherwise dispose of student data in its possession after the termination of services under this Agreement
 - (c) Provider shall undertake reasonable precautions to protect the student data and shall promptly report to the District any unauthorized access to the student data.

- 23. Conflict of Interest.** CONTRACTOR shall abide by and be subject to all applicable AUSD policies, regulations, statutes or other laws regarding conflict of interest. CONTRACTOR shall not hire any officer or employee of AUSD to perform any service by this Agreement. CONTRACTOR affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between CONTRACTOR's family, business or financial interest and the services provided under this Agreement. In the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to AUSD's attention in writing. Through its execution of this Agreement, CONTRACTOR acknowledges that it is familiar with the provisions of Section 1090 et seq. and Section 87100 et seq, of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event CONTRACTOR receives any information subsequent to execution of this Agreement, which might constitute a violation of said provisions, CONTRACTOR agrees it shall notify AUSD of this information.
- 24. 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.
- 25. Litigation.** This Agreement shall be performed in Alameda, California and is governed by the laws of the State of California. The Alameda County Superior Court shall have jurisdiction over any state court litigation initiated to enforce or interpret this Agreement. If litigation is initiated, the prevailing party shall be entitled to reasonable attorney's fees and costs.
- 26. Agreement Contingent on Governing Board Approval.** The District shall not be bound by the terms of this Agreement until it has been formally approved or ratified by the District's Governing Board, and/or Executive Cabinet as its designee, and no payment shall be owed or made to CONTRACTOR absent formal approval.
- 27. 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. The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.
- 28. Contract Publicly Posted.** This contract, its contents, and all incorporated documents are public documents and will be made available by AUSD to the public online via the Internet.
- 29. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** CONTRACTOR certifies to the best of his/her/its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).
- 30. Force Majeure.** At the District's discretion, the Parties shall be excused from performance hereunder during the time and to the extent that it is prevented from performing in the customary manner by an act of God, fire, flood, war, riot, civil disturbance, terrorism, epidemic, quarantine/shelter in place order, strike, lockout, labor dispute, or any other occurrence which is beyond the control of the parties, when evidence thereof is presented to the other party. The District shall not be responsible for any costs associated with this Agreement while performance is so excused.
- 31. Other.** Additional terms attached or edits to must be approved by legal counsel representing AUSD.

I. SITE

CONTRACTOR **Matthew S. Moyneur, Senior Engineer**
Print Name & Title: _____

CONTRACTOR Signature: Matthew S. Moyneur Date: 2-22-23

SOURCE OF FUNDS
Unrestricted Funds (general fund) _____ Donated Funds _____ Restricted Funds X

Budget Code: 21-9503-0-0000-8500-6140-003-77-3036

Robbie Lyng (Mar 6, 2023 10:46 PST) _____ Date: 03/06/2023
Requesting Administrator Date

The person(s) signing this Agreement on behalf of each party has been given the proper authority and empowered to enter into this Agreement.

FORWARD TO: Business Services for review and processing

II. HR

Human Resource Approval Yes No

Timothy Erwin (Mar 6, 2023 10:57 PST) _____ Date: 03/06/2023
Signature of Human Resource Administrator Date

III. CABINET

- Superintendent, Pasquale Scuderi
- Assistant Superintendent of Human Resources, Tim Erwin
- Assistant Superintendent of Educational Services, Kirsten Zazo
- Assistant Superintendent of Business Services, Shariq Khan

Shariq Khan (Mar 6, 2023 10:59 PST) _____ Date: 03/06/2023
Signature of Executive Cabinet Member Date

IV. BOARD

BOE Approval Required for Contracts Equal To Or Greater Than \$109,300:

Signature of President, Board of Education Date

Signature of Secretary, Board of Education Date

Instructions to Independent Contractors

Contractors who are not corporations should complete this form and submit with other contract documents.

Check all items that are true and correct. Contractor must inform Fiscal Services if business is converted into a corporation.

INDEPENDENT CONTRACTOR STATUS CHECKLIST

(Employee v. Independent Contractor)

Independent Contractor's Name:

N/A

Current AUSD employee or substitute? Yes No

LABOR CODE FACTORS (§ 2750.3) – ALL 3 MUST APPLY

- CONTRACTOR** and its workers are free from the control and direction of the District in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- The work to be performed by the **CONTRACTOR** and its workers is outside the usual course of the District's business.
- CONTRACTOR** is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

IRS COMMON LAW FACTORS:

- NO INSTRUCTIONS:** The worker will not be required to follow explicit instructions to accomplish the job. AUSD may provide job specifications, however.
- NO TRAINING:** The worker will not receive training provided by AUSD. The worker will use independent methods to accomplish the work.
- RIGHT TO HIRE OTHERS:** The worker is being hired to provide a result and will have the right to hire others to do the actual work/job.
- WORK NOT ESSENTIAL TO AUSD:** AUSD's success or continuation does not depend on the services of the worker.
- OWN WORK HOURS:** The worker will establish the work hours for the job.
- NOT A CONTINUING RELATIONSHIP:** The worker will not have a continuing relationship with AUSD. If the relationship is frequent, it will be at irregular intervals, or call (no full-time), or whenever work is available.
- CONTROL OF ASSISTANTS:** If assistants are hired, it will be at the worker's sole discretion. The worker will be responsible for hiring, supervising, and paying those assistants.
- TIME TO PURSUE OTHER WORK:** The worker will have time to pursue other gainful work.
- JOB LOCATION:** The worker will control the job location if work is performed on AUSD's premises; AUSD will not direct or supervise the work.
- ORDER OF WORK:** The worker will determine the order and sequence in which the job will be performed.
- BASIS OF PAYMENT:** The worker will be paid by the job or project, not by actual time expended. Periodic payments may

be made, though, based on a percentage of the completed job. Also, overall compensation may be based on the projected number of days/hours needed to do the job times a fixed daily/hourly rate. However, this compensation will be set in advance of the job.

- WORK FOR MULTIPLE FIRMS:** The worker may work for more than one firm or agency at a time.
- BUSINESS EXPENSES:** The worker will be responsible for incidental or special business expenses.
- OWN TOOLS/EQUIPMENT:** The worker will furnish the tools/equipment needed for the job. If AUSD leases equipment to the worker, the terms will be equivalent to what an independent business person could have obtained in the open market.
- SIGNIFICANT INVESTMENT:** The worker can perform services without hiring AUSD's facilities (equipment, office furniture, machinery, etc.). The worker's investment in his/her trade is real, essential, and adequate.

- SERVICES AVAILABLE TO GENERAL PUBLIC:** The worker makes his/her services available to the general public by (check one or more):
 - Having an office and assistants
 - Advertising his/her services (e.g., business cards, letterhead, telephone book, other)
 - Having business signs
 - Having a business license
 - Listing services in a business directory
 - Other
 - (Attached copies of business license, business cards, letterhead, advertisements)
- POSSIBLE PROFIT OR LOSS:** The worker can make a profit or a loss (check one or more):
 - The worker hires, directs, and pays assistants
 - The worker has his/her own office, equipment, materials, or facilities
 - The worker has continuing and recurring liabilities
 - The worker has agreed to perform specific jobs for prices agreed upon in advance
 - The worker's services affect his/her own business reputation
- LIMITED RIGHT TO DISCHARGE:** The worker cannot be fired so long as a result is produced which meets the contract specifications.
- NO COMPENSATION FOR NON-COMPLETION:** The worker is responsible for the satisfactory completion of the job and is not entitled to compensation in case of non-completion.
- NO INTERIM REPORTS:** The worker is hired for the final result, and therefore, the worker will be asked for progress or interim reports. (Note: Reports which are defined in the Independent Contractor Agreement as an expected final result of the agreement or which are required by state or federal law are part of the services contracted for and are not considered "interim" or "progress" reports.)

I, _____ (contractor's printed name), certify that all the statements as checked above are true and correct according to the best of my knowledge.

Signature: _____

EXHIBIT A

Proposal and Schedule of Fees

February 9, 2023

DSA File No. 1-1
DSA App. No. 01-120294
LEA No. 227

Stockton Office
3422 West Hammer Lane, Suite D
Stockton, CA 95219
209.234.7722 phone
209.234.7727 fax

Pedro Mora
Alameda Unified School District
2060 Challenger Drive
Alameda, California 94501
pmora@alamedaunified.org

Cost Proposal - Testing and Inspection Services
EARHART ELEMENTARY SCHOOL MODERNIZATION
400 Packet Landing Road
Alameda, California 94502

Wallace-Kuhl and Associates is pleased to submit this proposal to provide testing and inspection services during construction of the modernization at Earhart Elementary School in Alameda, California. The project consists of alterations to existing campus restrooms; HVAC alterations to several existing buildings; and additional modernization work at the existing campus.

Our budget estimate is based on review of the construction documents. We understand our scope of work would include inspection and testing of earthwork; foundation concrete and rebar; and concrete anchors as required by the project documents, as well as preparation of the Division of the State Architect (DSA) required documentation.

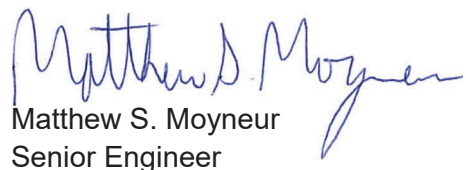
Based on our experience, we estimate that our fee for the special inspection and testing services required for this project would be approximately \$25,168.40. Billing would be only for work performed and determined based on the attached 2023P Schedule of Fees. Please be aware that we bill for our hourly services on a portal-to-portal basis from our Stockton office. Also, the construction schedule and the contractor's efficiency affect the number of site visits - and the cost - required for our services. Our representatives would work with the Project Inspector to perform our work in a timely and efficient manner. A construction schedule was not available at the time this report was prepared. If one becomes available, we request the opportunity to revise our estimate accordingly to more closely match the contractor's proposed means and methods.

In order to provide the most efficient and responsive service, scheduling for inspections must be made at least 24 hours in advance of the work. In addition, it is considered essential that the contractor be notified well in advance of your intention to have special inspection and testing performed, so that they are prepared for the required inspections. Please notify us immediately if the inspection is canceled so that you do not incur a trip charge.

To assure that all parties fully understand the limitations of our role in your project, we emphasize that our representative will not act as supervisor of construction, nor will they direct construction operations. The various sub-contractors should be informed that neither the presence of our representative nor the testing by our firm shall excuse them from defects discovered in their work. Job and site safety of the contractor's personnel will be the sole responsibility of the contractor.

Our agreement for this work is attached to this proposal. If this proposal is acceptable, please sign the agreement and return it to us as our written authorization to proceed. We will return a fully executed copy of the agreement to you for your files.

Wallace - Kuhl & Associates


Matthew S. Moynour
Senior Engineer

Attachments: Budget Estimate
Construction Testing Services Agreement
Schedule of Fees 2023P



Budget Estimate

AMELIA EARHART ELEMENTARY SCHOOL MODERNIZATION

Alameda, California

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	Unit	Cost (\$) Per Unit	Estimated Days	Estimated Quantity	Total
SOILS TESTING AND INSPECTION					
Utility Trench Backfill Testing	hour	\$ 135.00	5	5	\$ 3,375.00
Flatwork Subgrade Inspection/Testing	hour	\$ 135.00	2	5	\$ 1,350.00
Flatwork Aggregate Base Inspection/Testing	hour	\$ 135.00	2	5	\$ 1,350.00
Pavement Subgrade Inspection/Testing	hour	\$ 135.00	1	5	\$ 675.00
Pavement Aggregate Base Inspection/Testing	hour	\$ 135.00	1	5	\$ 675.00
Asphalt Concrete Inspection/Testing	hour	\$ 135.00	1	4	\$ 540.00
Laboratory Testing					
ASTM D1557 Curve	each	\$ 295.00	N/A	2	\$ 590.00
PROJECT ADMINISTRATION, REVIEW & REPORTS					
Supervising Technician	hour	\$ 130.00	2	1	\$ 260.00
Senior Engineer	hour	\$ 225.00	N/A	2	\$ 450.00
Mileage	Mile	\$ 0.80	12	148	\$ 1,420.80
SOILS TOTAL					\$ 10,685.80
CONCRETE TESTING AND INSPECTION					
Concrete Mix Design Review by Senior Engineer	hour	\$ 225.00	1	1	\$ 225.00
Reinforcing Steel Sampling and Tagging	hour	\$ 130.00	2	5	\$ 1,300.00
Batch Plant Inspection	hour	\$ 125.00	2	2	\$ 500.00
Concrete Placement T&I					
Miscellaneous	hour	\$ 125.00	2	6	\$ 1,500.00
Retrieve Test Samples	hour	\$ 125.00	2	4	\$ 1,000.00
Laboratory Testing					
Concrete Test Cylinders - 2 sets of 5	each	\$ 32.00	N/A	10	\$ 320.00
Reinforcing Steel Tensile Testing	each	\$ 100.00	N/A	2	\$ 200.00
Reinforcing Steel Bend Testing	each	\$ 55.00	N/A	2	\$ 110.00
CONCRETE TOTAL					\$ 5,155.00
POST-INSTALLED CONCRETE ANCHORS TESTING AND INSPECTION					
Concrete Anchor Torque Testing	hour	\$ 130.00	6	5	\$ 3,900.00
Suspended Ceiling Inspection / Testing	hour	\$ 150.00	2	5	\$ 1,500.00
ANCHOR TOTAL					\$ 5,400.00
STRUCTURAL STEEL TESTING AND INSPECTION					
Field Welding Inspection	hour	\$ 130.00	2	5	\$ 1,300.00
STRUCTURAL STEEL TOTAL					\$ 1,300.00

Budget Estimate

AMELIA EARHART ELEMENTARY SCHOOL MODERNIZATION

Alameda, California

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	Unit	Cost (\$) Per Unit	Estimated Days	Estimated Quantity	Total
PROJECT ADMINISTRATION, REVIEW & REPORTS					
Project Administration	hour	\$ 130.00	4	1	\$ 520.00
Senior Engineer - Report Review / DSA Documentation	hour	\$ 225.00	2	1	\$ 450.00
Mileage	Mile	\$ 0.80	14	148	\$ 1,657.60
PROJECT ADMINISTRATION TOTAL					\$ 2,627.60
PROJECT TOTAL					\$ 25,168.40

THIS AGREEMENT, effective as of February 9, 2023, is by and between **Alameda Unified School District** (“Client”) and **River City Geoprosessionals, Inc., dba Wallace-Kuhl and Associates** (“WKA”).

THE PROJECT: **EARHART ELEMENTARY SCHOOL MODERNIZATION**

THE PROJECT is generally described as:

Modernization work at the existing Earhart Elementary School campus (“Project Site”).

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

- General Conditions for Construction Testing Services;
- **WKA’s** Scope of Services Letter and,
- **WKA’s** Schedule of Fees (Exhibit A).

WKA agrees to perform the Services set forth in this Agreement and in accordance with its terms, including all attachments incorporated herein by reference. This Agreement may not be modified or altered, except in writing as specifically described in this Agreement.

CLIENT:

WKA:

Signature: _____

Print Name: _____

Matthew S. Moyneur

Title: _____

Senior Engineer

Company: _____

River City Geoprosessionals, Inc., dba
Wallace-Kuhl and Associates (WKA)

Address: _____

3436 W. Hammer Lane, Suite E

Stockton, CA 95219

Date: _____

GENERAL CONDITIONS FOR CONSTRUCTION TESTING SERVICES

1. DEFINITIONS

1.1. Contract Documents. Plans, specifications, and agreements between Client and Contractors, including addenda, amendments, supplementary instructions, and change orders.

1.2. Contractor. The contractor or contractors retained to construct the Project for which **Wallace-Kuhl and Associates (WKA)** is providing Services under this Agreement.

1.3. Day(s). Calendar day(s) unless otherwise stated.

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

1.5. Services. The Services provided by **WKA** as set forth in this Agreement, the SCOPE OF SERVICES and any written amendment to this Agreement.

1.6. Work. The labor, materials, equipment and services required to complete the work described in the Contract Documents.

2. SCOPE OF SERVICES

WKA will perform the Services set forth in the attached SCOPE OF SERVICES.

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

2.2. Licenses. **WKA** will procure and maintain business and professional licenses and registrations necessary to provide its Services.

2.3. Excluded Services. **WKA's** Services under this Agreement include only those Services specified in the SCOPE OF SERVICES.

2.3.1. General. Client expressly waives any claim against **WKA** resulting from its failure to perform recommended additional Services that Client has not authorized **WKA** to perform, and any claim that **WKA** failed to perform services that Client instructs **WKA** not to perform.

2.3.2. Biological Pollutants. **WKA's** SCOPE OF SERVICES specifically excludes the investigation, detection, prevention or assessment of the presence of Biological Pollutants. The term "Biological Pollutants" includes, but is not limited to, molds, fungi, spores, bacteria, viruses, and/or any of their byproducts. **WKA's** SCOPE OF SERVICES will not include any interpretations, recommendations, findings, or conclusions pertaining to Biological Pollutants. Client agrees that **WKA** has no liability for any claims alleging a failure to investigate, detect, prevent, assess, or make recommendations for preventing, controlling, or abating Biological Pollutants. Furthermore, Client agrees to defend, indemnify, and hold harmless **WKA** from all claims by any third party concerning Biological Pollutants, except for damages caused by **WKA's** sole negligence.

3. PAYMENTS TO WKA

3.1. Basic Services. **WKA** will perform all Services set forth in the attached SCOPE OF SERVICES AND SCHEDULE OF FEES for the amount(s) set forth therein.

3.2. Additional Services. Any Services performed under this Agreement, except those Services expressly identified in the attached SCOPE OF SERVICES, will be provided on a time and materials basis unless otherwise specifically agreed to in writing by both parties.

3.3. Estimate of Fees. **WKA** will, to the best of its ability, perform the Services and accomplish the objectives defined in this Agreement within any written cost estimate provided by **WKA**. Client recognizes that changes in scope and schedule, and unforeseen circumstances can all influence the successful completion of Services within the estimated cost. The use of an estimate of fees or of a "not to exceed" limitation is not a guarantee that the Services will be completed for that amount; rather, it indicates that **WKA** shall not incur fees and expenses in excess of the estimate or limitation amount without obtaining Client's agreement to do so.

3.4. Rates. Client will pay **WKA** at the rates set forth in the attached SCHEDULE OF FEES.

3.4.1. Changes to Rates. Client and **WKA** agree that the SCHEDULE OF FEES is subject to periodic review and amendment, as appropriate to reflect **WKA's** then-current fee structure. **WKA** will give Client at least 30 days advance notice of any changes. Unless Client objects in writing to the proposed

amended fee structure within 30 days of notification, the amended fee structure will be incorporated into this Agreement and will then supersede any prior fee structure. If Client timely objects to the amended fee structure, and **WKA** and Client cannot agree upon a new fee structure within 30 days after notice, **WKA** may terminate this Agreement and be compensated as set forth under Section 18, "Termination."

3.4.2. Prevailing Wages. Unless Client specifically informs **WKA** in writing that prevailing wage regulations cover the Project and the SCOPE OF SERVICES identifies it as covered by such regulations, Client will reimburse, defend, indemnify and hold harmless **WKA** from and against any liability resulting from a subsequent determination that prevailing wage regulations cover the Project, including all costs, fines and attorneys' fees.

3.5. Payment Timing; Late Charge. All invoices are due upon receipt. All amounts unpaid 30 days after the invoice date will include a late payment charge from the date of the invoice, at the rate of 1-1/2% per month or the highest rate permitted by law. If the Client is an LLC or LLP, the person signing this agreement shall be personally responsible for payment of all invoices and late fees.

4. STANDARD OF PERFORMANCE; DISCLAIMER OF WARRANTIES

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

4.2. Standard of Care. Subject to the limitations inherent in the agreed SCOPE OF SERVICES as to the degree of care, the amount of time and expenses to be incurred, and subject to any other limitations contained in this Agreement, **WKA** will perform its Services consistent with that level of care and skill ordinarily exercised by other professional engineers practicing in the same locale and under similar circumstances at the time the Services are performed.

4.3. No Warranty. No warranty, either express or implied, is included or intended by this Agreement.

5. ESTIMATE OF CONSTRUCTION COSTS

Client acknowledges that construction and Project development are subject to many influences that are not subject to precise forecasting and are outside of **WKA's** control. Client further acknowledges that actual costs incurred may vary substantially from the estimates prepared by **WKA** and that **WKA** does not warrant or guaranty the accuracy of construction or development cost estimates.

6. CONSTRUCTION PHASE SERVICES

If **WKA's** SCOPE OF SERVICES includes observation and/or testing during the course of construction, **WKA** may:

6.1. Construction Observation.

6.1.1. Site Meetings & Visits. **WKA** will participate in job site meetings as requested by Client or Client's designated representative, and, unless otherwise requested by Client, visit the site at times specified in the SCOPE OF SERVICES or, if not specified in the SCOPE OF SERVICES, at intervals as **WKA** deems appropriate to the various stages of construction to observe the geotechnical conditions encountered by Contractor and the progress and quality of the geotechnical aspects of the Work. Based on information obtained during such visits and on such observations, **WKA** may inform Client of the progress of the geotechnical aspects of the Work. Client understands that **WKA** may not be on site continuously; and, unless expressly agreed otherwise, **WKA** will not observe all of the Work.

6.1.2. Contractor's Performance. **WKA** does not, and cannot, warrant or guarantee that all of the geotechnical Work performed by Contractor meets the requirements of **WKA's** geotechnical recommendations or the plans and specifications for such geotechnical Work; nor can **WKA** be responsible for Contractor's failure to perform the Work in accordance with the plans, specifications or the recommendations of **WKA**.

6.1.3. Contractor's Responsibilities. **WKA** will not supervise, direct or have control over the Work nor will **WKA** have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor for the geotechnical aspects of the Project; for safety precautions and programs incident to the Work; nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor furnishing and performing its Work.

6.1.4. Final Report. At the conclusion of Construction Phase Services, **WKA** will provide Client with a written report summarizing the tests and observations, if any, made by **WKA**.

6.2. Review of Contractor's Submittals. If included in the SCOPE OF WORK, **WKA** will review and take appropriate action on the Contractor's submittals, such as shop drawings, product data, samples, and other required submittals. **WKA** will review such submittals solely for general conformance with **WKA's** design, and will not include review for the following, all of which will remain the responsibility of the Contractor: accuracy or completeness of details, quantities or dimensions; construction means, methods, sequences or procedures; coordination among trades; or construction safety.

6.3. Tests. Tests performed by **WKA** on finished Work or Work in progress are taken intermittently and indicate the general acceptability of the Work on a statistical basis. **WKA's** tests and observations of the Work are not a guarantee of the quality of Work and do not relieve other parties from their responsibility to perform their Work in accordance with applicable plans, specifications and requirements.

7. CLIENT'S RESPONSIBILITIES

In addition to payment for the Services performed under this Agreement, Client agrees to:

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

7.2. Representative. Designate a representative with authority to receive all notices and information pertaining to this Agreement, communicate Client's policies and decisions, and assist as necessary in matters pertaining to the Project and this Agreement. Client's representative will be subject to change by written notice.

7.3. Rights of Entry. Provide access to and/or obtain permission for **WKA** to enter upon all property, whether or not owned by Client, as required to perform and complete the Services. **WKA** will operate with reasonable care to minimize damage to the Project Site(s). However, Client recognizes that **WKA's** operations and the use of investigative equipment may unavoidably alter conditions or affect the environment at the existing Project Site(s). The cost of repairing such damage will be borne by Client and is not included in the fee unless otherwise stated.

7.4. Relevant Information. Supply **WKA** with all information and documents in Client's possession or knowledge which are relevant to **WKA's** Services. Client warrants the accuracy of any information supplied by it to **WKA** and acknowledges that **WKA** is entitled to rely upon such information without verifying its accuracy. Prior to the commencement of any Services in connection with a specific property, Client will notify **WKA** of any known potential or possible health or safety hazard existing on or near the Project Site, with particular reference to Hazardous Materials or conditions.

7.5. Subsurface Structures. Correctly designate on plans to be furnished to **WKA**, the location of all subsurface structures, such as pipes, tanks, cables and utilities within the property lines of the Project Site(s) and be responsible for any damage inadvertently caused by **WKA** to any such structure or utility not so designated. **WKA** is not liable to Client for any losses, damages or claims arising from damage to subterranean structures or utilities that were not correctly shown on plans furnished by Client to **WKA**.

8. CHANGED CONDITIONS

If **WKA** discovers conditions or circumstances that it had not contemplated at the commencement of this Agreement ("Changed Conditions"), **WKA** will notify Client in writing of the Changed Conditions. Client and **WKA** agree to that they will then renegotiate in good faith the terms and conditions of this Agreement. If **WKA** and Client cannot agree upon amended terms and conditions within 30 days after notice, **WKA** may terminate this Agreement and be compensated as set forth in Section 18, "Termination."

9. HAZARDOUS MATERIALS

Client understands that **WKA's** Services under this Agreement are limited to geotechnical engineering and that **WKA** has no responsibility to locate, identify, evaluate, treat or otherwise consider or deal with Hazardous Materials. Client is solely responsible for notifying all appropriate federal, state, municipal or other governmental agencies, including the potentially affected public, of the existence of any Hazardous Materials located on or in the Project site, or located during the performance of this Agreement. The existence or discovery of Hazardous Materials constitutes a Changed Condition under this Agreement.

10. CERTIFICATIONS

Client agrees not to require that **WKA** execute any certification with regard to Services performed or Work tested and/or observed under this Agreement unless: 1) **WKA** believes that it has performed sufficient Services to provide a sufficient basis to issue the certification; 2) **WKA** believes that the Services performed or Work tested and/or observed meet the criteria of the certification; and 3) **WKA** has reviewed and approved in writing the exact form of such certification prior to execution of this Agreement. Any certification by **WKA** is limited to an expression of professional opinion based upon the Services performed by **WKA**, and does not constitute a warranty or guaranty, either express or implied.

11. ALLOCATION OF RISK

11.1. Limitation of Liability. The total cumulative liability of **WKA**, its subconsultants and subcontractors, and all of their respective shareholders, directors, officers, employees and agents (collectively "**WKA Entities**"), to Client arising from Services under this Agreement, including attorney's fees due under this Agreement, will not exceed the gross compensation received by **WKA** under this Agreement or \$50,000, whichever is greater; provided, however, that such liability is further limited as described below. This limitation applies to all lawsuits, claims or actions that allege errors or omissions in **WKA's** Services, whether alleged to arise in tort, contract, warranty, or other legal theory. Upon Client's written request, **WKA** and Client may agree to increase the limitation to a greater amount in exchange for a negotiated increase in **WKA's** fee, provided that they amend this Agreement in writing as provided in Section 20.

11.2. Indemnification.

11.2.1. Indemnification of Client. Subject to the provisions and limitations of this Agreement, **WKA** agrees to indemnify and hold harmless Client, its shareholders, officers, directors, and employees from and against any and all claims, suits, liabilities, damages, expenses (including reasonable attorney's fees and costs of defense), or other losses (collectively "Losses") to the extent caused by **WKA's** negligent performance of its Services under this Agreement and

proportionate the degree of fault of **WKA**. Notwithstanding the foregoing, **WKA** has no immediate obligation to provide the defense of any indemnified party for claims, suits, liabilities, damages, expenses alleged to have been caused by the negligent performance of professional services performed by **WKA**. **WKA** agrees to reimburse indemnified parties their reasonable cost of defense ultimately determined by an arbiter or Court of competent jurisdiction to have been caused by **WKA's** negligent performance of professional services and proportionate to **WKA's** fault.

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

11.3. Consequential Damages. Neither Client nor **WKA** will be liable to the other for any special, consequential, incidental or penal losses or damages including but not limited to losses, damages or claims related to the unavailability of property or facilities, shutdowns or service interruptions, loss of use, profits, revenue, or inventory, or for use charges, cost of capital, or claims of the other party and/or its customers.

11.4. Continuing Agreement. The indemnity obligations and the limitations of liability established under this Agreement will survive the expiration or termination of this Agreement. If **WKA** provides Services to Client that the parties do not confirm through execution of an amendment to this Agreement, the obligations of the parties to indemnify each other and the limitations on liability established under this Agreement apply to such Services as if the parties had executed an amendment.

12. INSURANCE

12.1. WKA's Insurance. **WKA** will obtain, if reasonably available, the following coverages:

12.1.1. Statutory Workers' Compensation/Employer's Liability Insurance;

12.1.2. Commercial General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate;

12.1.3. Automobile Liability Insurance, including liability for all owned, hired and non-owned vehicles with minimum limits of \$1,000,000 for bodily injury per person, \$1,000,000 property damage, and \$1,000,000 combined single limit per occurrence; and,

12.1.4. Professional Liability Insurance in amounts of \$2,000,000 per claim and annual aggregate.

12.2. Contractor's Insurance. Client shall require that all Contractors and subcontractors for the Project name **WKA** as an additional insured under their General Liability and Automobile Liability insurance policies. If Client is not the Project owner, Client will require the Project owner to require the owner's Contractor to purchase and maintain General Liability, Builder's Risk, Automobile Liability, Workers' Compensation, and Employer's Liability insurance with limits no less than as set forth above, and to name **WKA** and its subcontractors and subconsultants as additional insureds on the General Liability insurance.

12.3. Certificates of Insurance. Upon request, **WKA** and Client will each provide the other with certificate(s) of insurance evidencing the existence of the policies required herein. Except for Professional Liability and Workers' Compensation Insurance, all policies required herein shall contain a waiver of subrogation.

13. OWNERSHIP AND USE OF DOCUMENTS

13.1. Client Documents. All documents provided by Client will remain the property of Client. **WKA** will return all such documents to Client upon request but may retain file copies of such documents.

13.2. WKA's Documents. Unless otherwise agreed in writing, all documents and information prepared by **WKA** or obtained by **WKA** from any third party in connection with the performance of Services, including, but not limited to, **WKA's** reports, boring logs, maps, field data, field notes, drawings and specifications, laboratory test data and other similar documents (collectively "Documents") are the property of **WKA**. **WKA** has the right, in its sole discretion, to dispose of or retain the Documents.

13.3. Use of Documents. All Documents prepared by **WKA** are solely for use by Client and will not be provided by either party to any other person or entity without **WKA's** prior written consent.

13.3.1. Use by Client. Client has the right to reuse the Documents for purposes reasonably connected with the Project for which the Services are provided, including without limitation design and licensing requirements of the Project.

13.3.2. Use by WKA. **WKA** retains the right of ownership with respect to any patentable concepts or copyrightable materials arising from its Services and the right to use the Documents for any purpose.

13.4. Electronic Media. **WKA** may agree at Client's request to provide Documents and information in an electronic format. Client recognizes that Documents or other information recorded on or transmitted as electronic media are subject to

undetectable alteration due to (among other causes) transmission, conversion, media degradation, software error, or human alteration. Accordingly, all Documents and information provided by **WKA** in electronic media are for informational purposes only and not as final documentation. Unless otherwise defined in the Scope of Services, **WKA's** electronic Documents and media will conform to **WKA's** standards. **WKA** will provide any requested electronic Documents for a 30-day acceptance period, and **WKA** will correct any defects reported by Client to **WKA** and provide one round of reasonable editorial revisions during this period. **WKA** makes no warranties, either express or implied, regarding the fitness or suitability of any electronic Documents or media.

13.5. Unauthorized Reuse. No party other than Client may rely, and Client will not represent to any other party that it may rely on Documents without **WKA's** express prior written consent and receipt of additional compensation. Client will not permit disclosure, mention, or communication of, or reference to the Documents in any offering circular, securities offering, loan application, real estate sales documentation, or similar promotional material without **WKA's** express prior written consent. Client waives any and all claims against **WKA** resulting in any way from the unauthorized reuse or alteration of Documents by itself or anyone obtaining them through Client. Client will defend, indemnify and hold harmless **WKA** from and against any claim, action or proceeding brought by any party claiming to rely upon information or opinions contained Documents provided to such person or entity, published, disclosed or referred to without **WKA's** prior written consent.

14. SAMPLES AND CUTTINGS

14.1. Sample Retention. If **WKA** provides laboratory testing or analytic Services, **WKA** will preserve such soil, rock, water, or other samples as it deems necessary for the Project, but no longer than 45 days after issuance of any Documents that include the data obtained from these samples. Client will promptly pay and be responsible for the removal and lawful disposal of all contaminated samples, cuttings, Hazardous Materials, and other hazardous substances.

14.2. Monitoring Wells. Client will take custody of all monitoring wells and probes installed during any investigation by **WKA** and will take any and all necessary steps for the proper maintenance, repair or closure of such wells or probes at Client's expense.

15. RELATIONSHIP OF THE PARTIES

WKA will perform Services under this Agreement as an independent contractor.

16. ASSIGNMENT AND SUBCONTRACTS

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, except for an assignment of proceeds for financing purposes. **WKA** may

subcontract for the services of others without obtaining Client's consent if **WKA** deems it necessary or desirable for others to perform certain Services.

17. SUSPENSION AND DELAYS

17.1. Procedures. Client may, at any time by 10 days written notice suspend performance of all or any part of the Services by **WKA**. **WKA** may terminate this Agreement if Client suspends **WKA's** Services for more than 60 days and Client will pay **WKA** as set forth under Section 18, "Termination." If Client suspends **WKA's** Services, or if Client or others delay **WKA's** Services, Client and **WKA** agree to equitably adjust: (1) the time for completion of the Services; and (2) **WKA's** compensation in accordance with **WKA's** then current SCHEDULE OF FEES for the additional labor, equipment, and other charges associated with maintaining its workforce for Client's benefit during the delay or suspension, or charges incurred by **WKA** for demobilization and subsequent remobilization.

17.2. Liability. **WKA** is not liable to Client for any failure to perform or delay in performance due to circumstances beyond **WKA's** control, including but not limited to pollution, contamination, or release of hazardous substances, strikes, lockouts, riots, wars, fires, flood, explosion, pandemics, epidemics, adverse weather conditions, acts of government, labor disputes, delays in transportation or inability to obtain material and equipment in the open market.

18. TERMINATION

18.1. Termination for Convenience. **WKA** and Client may terminate this Agreement for convenience upon 30 days written notice delivered or mailed to the other party.

18.2. Termination for Cause. In the event of material breach of this Agreement, the party not breaching the Agreement may terminate it upon 10 days written notice delivered or mailed to the other party. The termination notice shall state the basis for the termination. The Agreement may not be terminated for cause if the breaching party cures the breach within the 10-day period.

18.3. Payment on Termination. Following termination other than for **WKA's** material breach of this Agreement, Client will pay **WKA** for Services performed prior to the termination notice date, and for any necessary Services and expenses incurred in connection with the termination of the Project, including but not limited to, the costs of completing analysis, records and reports necessary to document job status at the time of termination and costs associated with termination of subcontractor contracts in accordance with **WKA's** then current SCHEDULE OF FEES.

19. DISPUTES

19.1. Mediation. All disputes between **WKA** and Client are subject to mediation. Either party may demand mediation by serving a written notice stating the essential nature of the

dispute, amount of time or money claimed, and requiring that the matter be mediated within 45 days of service of notice.

19.2. Precondition to Other Action. No action or suit may be commenced unless the mediation did not occur within 45 days after service of notice; or the mediation occurred but did not resolve the dispute; or a statute of limitation would elapse if suit was not filed prior to 45 days after service of notice.

19.3. Choice of Law; Venue. This Agreement will be construed in accordance with and governed by the laws of the State of California. Unless the parties agree otherwise, any mediation or other legal proceeding will occur in the state and county in which the Project is located.

19.4. Statutes of Limitations. Any applicable statute of limitations will be deemed to commence running on the earlier of the date of substantial completion of WKA's Services under this Agreement or the date on which claimant knew, or should have known, of facts giving rise to its claims.

20. MISCELLANEOUS

20.1. Integration and Severability. This Agreement reflects the entire agreement of the parties with respect to its terms

and supersedes all prior agreements, whether written or oral. If any portion of this Agreement is void or voidable, such portion will be deemed stricken and the Agreement reformed to as closely approximate the stricken portions as the law allows.

20.2. Modification of this Agreement. This Agreement may not be modified or altered, except by a written agreement signed by authorized representatives of both parties and referring specifically to this Agreement.

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

20.4. Headings. The headings used in this Agreement are for convenience only and are not a part of this Agreement.

20.5. Waiver. The waiver of any term, conditions or breach of this Agreement will not operate as a subsequent waiver of the same term, condition, or breach.

End of General Conditions

EXHIBIT A
WKA Schedule of Fees

PROFESSIONAL SERVICES

PROFESSIONAL SERVICES

Principal Engineer / Geologist	\$ 225.00	per hour
Senior Engineer / Geologist	\$ 220.00	per hour
Senior Environmental Scientist	\$ 220.00	per hour
Project Engineer / Geologist	\$ 180.00	per hour
Project Environmental Scientist	\$ 180.00	per hour
Senior Staff Engineer / Geologist	\$ 165.00	per hour
Senior Staff Environmental Scientist	\$ 165.00	per hour
Staff Engineer / Geologist	\$ 155.00	per hour
Staff Environmental Scientist	\$ 155.00	per hour
Senior Environmental Technician	\$ 130.00	per hour
Senior / Supervising Technician	\$ 130.00	per hour
Draftsperson / GIS Technician	\$ 125.00	per hour
Administrative Assistant	\$ 95.00	per hour

FIELD INVESTIGATION TESTING

Seismic Refraction Survey	\$ 215.00	per hour
Thermal Resistivity Testing	\$ 215.00	per hour
Electrical Resistivity Survey	\$ 215.00	per hour
Hand Augering/Sampling - Engineer	\$ 190.00	per hour
Photoionization Detector	\$ 220.00	per hour
Rebar Location / GPR	\$ 345.00	per hour

LITIGATION

Data Review/Consultation	\$ 375.00	per hour
Depositions/Expert Witness Testimony	\$ 475.00	per hour

EXPENSES

Vehicle Charges (<i>Subject to periodic adjustment due to fuel cost</i>)	\$ 0.80	per mile
Subsistence	\$ 125.00	per day
Lodging	Cost	plus 20%
Services by Associate Firms and other outside services	Cost	plus 20%
Equipment rental, freight, special materials	Cost	plus 20%
Extra Report Copies		
Black and white versions	\$ 50.00	each
Color photography versions	\$ 65.00	each

PREMIUM CHARGES

Overtime and Saturdays	hourly rate plus 40	percent
Sunday and Holidays, and over 8 hrs on Saturday	hourly rate plus 75	percent

SHIFT DIFFERENTIAL

A 25 percent shift differential surcharge will be added to the hourly rate of personnel involved in scheduled testing work between the hours of 6 P.M. and 5 A.M., as well as a four hour minimum.



FIELD SERVICES

CONCRETE & REINFORCING STEEL

Ball Penetration (Kelly Ball)	\$ 150.00 /hr.
Batch Plant Inspection	\$ 125.00 /hr.
CaCl Moisture Emission Test Kit	\$ 45.00 /kit
CaCl Moisture Emission Testing	\$ 125.00 /hr.
CLSM/CDF/Slurry Testing	\$ 125.00 /hr.
Concrete Mix Design Review	\$ 220.00 /hr.
Concrete Placement Obs/Cast Cylinder	\$ 125.00 /hr.
Concrete Rebound Number Testing	\$ 150.00 /hr.
Concrete Trial Batch	\$ 125.00 /hr.
Floor Flatness Testing	\$ 150.00 /hr.
High Strength Grout Sampling / Testing	\$ 125.00 /hr.
Rebar / Post Tension Special Inspection	\$ 130.00 /hr.
Rebar Location / GPR	\$ 340.00 /hr.
Rebar Location / Pachometer	\$ 150.00 /hr.
Rebar Placement Inspection	\$ 130.00 /hr.
Reinforcing Steel Sampling/Tagging	\$ 125.00 /hr.
Relative Humidity Testing	\$ 150.00 /hr.
Shotcrete Special Inspection	\$ 125.00 /hr.
Transport Cylinders / Samples to Lab	\$ 125.00 /hr.

CORING

Coring (Technician + equipment)	\$ 150.00 /hr.
Coring (Technician assistant)	\$ 125.00 /hr.

POST-INSTALLED ANCHORS

Concrete Anchor Installation Inspection	\$ 130.00 /hr.
Concrete Anchor Proof Load Testing	\$ 150.00 /hr.
Concrete Anchor Torque Testing	\$ 130.00 /hr.
Suspended Ceiling Inspection / Testing	\$ 150.00 /hr.

STRUCTURAL STEEL

Fireproofing Special Inspection / Testing	\$ 130.00 /hr.
High Strength Bolt Skidmore Testing	\$ 150.00 /hr.
High Strength Bolt Special Inspection	\$ 130.00 /hr.
Material Identification	\$ 130.00 /hr.
Non-Destructive Testing - UT/MT/PT	\$ 150.00 /hr.
Tower Certified Special Inspector	\$ 150.00 /hr.
Welding Special Inspection - Field	\$ 130.00 /hr.
Welding Special Inspection - Shop	\$ 130.00 /hr.

MASONRY

In-Place Masonry Flatjack Testing	\$ 190.00 /hr.
In-Place Masonry Shear Testing	\$ 150.00 /hr.
Masonry Materials Sampling / Testing	\$ 130.00 /hr.
Masonry Special Inspection	\$ 130.00 /hr.
Masonry Special Inspection DSA Cert.	\$ 135.00 /hr.

SOILS & ASPHALT CONCRETE

Asphalt Concrete Inspection / Testing	\$ 135.00 /hr.
Asphalt Concrete Materials Sampling	\$ 135.00 /hr.
Building Pad Special Inspection / Testing	\$ 135.00 /hr.
Deep Foundation Inspection	\$ 135.00 /hr.
Flatwork AB Inspection / Testing	\$ 135.00 /hr.
Flatwork Subgrade Inspection / Testing	\$ 135.00 /hr.
Grading Inspection / Testing	\$ 135.00 /hr.
Hand Augering and Sampling	\$ 135.00 /hr.
Pavement AB Inspection / Testing	\$ 135.00 /hr.
Pavement Subgrade Inspection / Testing	\$ 135.00 /hr.
Proof Rolling Observation	\$ 135.00 /hr.
Shallow Foundation Inspection	\$ 135.00 /hr.
Slab Subgrade Soil Moisture Tests	\$ 135.00 /hr.
Soil / Aggregate Sampling	\$ 135.00 /hr.
Soil Treatment Testing / Observation	\$ 135.00 /hr.
Structure Backfill Inspection / Testing	\$ 135.00 /hr.
Subgrade Stabilization Observation	\$ 135.00 /hr.
Utility Trench Backfill Testing	\$ 135.00 /hr.
WKA Drill Rig (including operator)	\$ 260.00 /hr.
WKA Drill Rig (helper)	\$ 135.00 /hr.

SPECIALIZED SERVICES

Coefficient of Friction Testing	\$ 165.00 /hr.
Crack Monitoring	**
Epoxy / FRP Installation Inspection	\$ 125.00 /hr.
Existing Building Evaluation / Demo	\$ 125.00 /hr.
Existing Building Evaluation / Document	\$ 125.00 /hr.
Existing Building Evaluation / Repair	\$ 125.00 /hr.
Field Investigate Support	\$ 125.00 /hr.
Firestopping Inspection	\$ 140.00 /hr.
GFRC Inspection / Testing	\$ 125.00 /hr.
Glulam / Truss Fabrication Inspection	\$ 140.00 /hr.
Glulam / Truss Inspection Travel	\$ 100.00 /hr.
Megger Ground Testing	\$ 155.00 /hr.
Prestress Framing Installation	\$ 125.00 /hr.
Proto Wall Inspection / Testing	\$ 125.00 /hr.
Roofing Inspection	\$ 125.00 /hr.
Shear Nailing Inspection	\$ 125.00 /hr.
Soil Elect. Resitivity Testing - Technician	\$ 165.00 /hr.
Thickness Testing - Coating / Steel	\$ 155.00 /hr.
Timber Framing / Hardware Inspection	\$ 125.00 /hr.
Timber-in-Structure Inspection	\$ 155.00 /hr.
Vapor Barrier Inspection	\$ 125.00 /hr.
Vibration Monitoring	**

GENERAL

Inspection / Testing Cancelled	*
Reinspection / Retesting	*
Stand-by Time	*

* Based on hourly rate of Inspection or Testing scheduled

** Based on Staff Classification



LABORATORY SERVICES

SOIL

Atterberg Limits (LL/PI) - Wet Method	ASTM D4318	\$ 185.00	each
CLSM/CDF/Soil Cement Compression Test	ASTM D4832	\$ 70.00	each
Compaction Characteristics	ASTM D698	\$ 295.00	each
Compaction Characteristics	ASTM D1557	\$ 295.00	each
Compaction Characteristics	CTM 216	\$ 295.00	each
Consolidation (8 loads + 1 rebound)	ASTM D2435	\$ 560.00	each
Consolidation (additional loads)	ASTM D2435	\$ 90.00	each
Expansion Index	ASTM D4829	\$ 225.00	each
Hydraulic Conductivity, Flexible Wall Permeability	ASTM D5084	\$ 470.00	each
Lime-Treated Unconfined Compression	CTM 373	\$ 895.00	each
Moisture Content	ASTM D2216	\$ 48.00	each
Organic Content	ASTM D2974	\$ 115.00	each
Particle-Size Distribution - Hydrometer	ASTM D7928	\$ 195.00	each
Particle-Size Distribution - Sieve Analysis	ASTM D6913	\$ 130.00	each
Resistance "R" Value - Laboratory Lime-Treated	ASTM D2844, CTM 301	\$ 355.00	each
Resistance "R" Value - Untreated	ASTM D2844, CTM 301	\$ 310.00	each
Sieve Analysis - Passing No. 200 only	ASTM D1140	\$ 110.00	each
Specific Gravity of Soils	ASTM D854	\$ 160.00	each
Thermal Resistivity	ASTM D5334	\$ 90.00	each
Triaxial Compression Test, 1 point - Remolded	ASTM D4767	\$ 380.00	each
Triaxial Compression Test, 1 point - Undisturbed	ASTM D4767	\$ 295.00	each
Triaxial Compression Test, 3 Pt. Staged - Remolded	ASTM D4767	\$ 465.00	each
Triaxial Compression Test, 3 Pt. Staged - Undisturbed	ASTM D4767	\$ 360.00	each
Unconfined Compression Test	ASTM D2166	\$ 130.00	each
Unit Weight/Moisture Content - Tube Sample	ASTM D2937/D2216	\$ 48.00	each

AGGREGATE

Aggregate Unit Weight	ASTM C29	\$ 70.00	each
Clay Lumps and Friable Particles	ASTM C142	\$ 180.00	per size
Cleanness Value	CTM 227	\$ 195.00	each
Correction of Unit Weight & Water Content for Oversize Particles	ASTM D4718	\$ 135.00	each
Durability Index (Coarse or Fine)	CTM 229	\$ 190.00	each
Flat and Elongated Particles in Coarse Aggregate	ASTM D4791	\$ 140.00	per size
Fractured/Crushed Particles	ASTM D5821, CTM 205, AASHTO T335	\$ 140.00	per size
Organic Impurities in Fine Aggregates	ASTM C40	\$ 75.00	each
Resistance "R" Value - Aggregate	CTM 301	\$ 355.00	each
Sand Equivalent, 1 point	CTM 217, AASHTO T176	\$ 125.00	each
Sand Equivalent, 3 points	CTM 217, AASHTO T176	\$ 160.00	each
Sieve Analysis - Coarse or Fine	ASTM C136, CTM 202, AASHTO T27	\$ 130.00	each
Sieve Analysis - Passing No. 200 only	ASTM C117, AASHTO T11	\$ 110.00	each
Sodium Sulfate Soundness	ASTM C88, CTM 214	\$ 190.00	per size
Specific Gravity and Absorption (Coarse or Fine)	ASTM C127, C128	\$ 145.00	each

ASPHALT CONCRETE

Asphalt Content (Ignition Oven)	CTM 382,AASHTO T308	\$ 300.00	each
Asphalt Content Correction Factor Development	CTM 382,AASHTO T308	\$ 590.00	each
Hveem Compaction, Unit Weight, and Stability	ASTM D1560/D2726		
	CTM 304/308, AASHTO T166	\$ 385.00	set of 3
Laboratory Test Maximum Density (LTMD), 5 points	CTM 375	\$ 405.00	each
Moisture Content of Asphalt Mixtures	CTM 370, AASHTO T329	\$ 90.00	each
Sieve Analysis of AC Aggregate (Coarse and Fine)	ASTM D5444, CTM 202, AASHTO T30	\$ 200.00	each



LABORATORY SERVICES

ASPHALT CONCRETE (continued)

Theoretical Maximum Density	ASTM D2041, CTM 309, AASHTO T209	\$ 190.00	each
Thickness of AC Cores	ASTM D3549	\$ 32.00	each
Unit Weight of AC Cores	CTM 308, AASHTO T166/T275	\$ 75.00	each

CONCRETE

Compression Test, Concrete Cylinder	ASTM C39	\$ 32.00	each
Compression Test, Concrete Cylinder - Hold	ASTM C39	\$ 29.00	each
Compression Test, Concrete Core	ASTM C42, C39	\$ 90.00	each
Compression Test, Shotcrete Core	ASTM C42, C39	\$ 120.00	each
Compression Test, High Strength Grout	ASTM C1107/C109	\$ 50.00	each
Concrete Cylinder Mold		\$ 8.00	each
Density / Unit Weight of Concrete	ASTM C567, C642	\$ 120.00	each
Flexural Strength Test, Concrete Beam	ASTM C78	\$ 135.00	each
Laboratory Drying Shrinkage Test, per beam	ASTM C157, AASHTO T160	\$ 240.00	each
Splitting Tensile Test, Concrete Cylinder	ASTM C496	\$ 95.00	each
Compression Test, Lt. Wt. Insulating Concrete	ASTM C495	\$ 100.00	each

MASONRY

Brick			
Compression Test	ASTM C67	\$ 85.00	each
Modulus of Rupture	ASTM C67	\$ 90.00	each
Absorption	ASTM C67	\$ 100.00	each
Concrete Masonry Unit			
Compression Test	ASTM C140	\$ 100.00	each
Absorption & Moisture Content	ASTM C140	\$ 100.00	each
Linear Drying Shrinkage	ASTM C426	\$ 250.00	each
Compression Test, Composite Masonry Prism	ASTM C1314	\$ 170.00	each
Compression Test, Masonry Grout	ASTM C1019	\$ 55.00	each
Compression Test, Mortar	ASTM C780/C109	\$ 50.00	each
Core Shear Test	CBC Section 2105A	\$ 110.00	each

STEEL

Anchor Bolt Tensile Test	ASTM F606	\$ 130.00	each
Fireproofing Density Test	ASTM E605	\$ 115.00	each
High Strength Bolt Assembly Laboratory Testing			
Bolt - Wedge Tension Test	ASTM F606	\$ 100.00	each
Bolt - Proof Load Test	ASTM F606	\$ 100.00	each
Bolt - Hardness Test	ASTM E18	\$ 50.00	each
Nut - Proof Load Test	ASTM F606	\$ 100.00	each
Nut - Hardness Test	ASTM E18	\$ 50.00	each
Washer - Hardness Test	ASTM E18	\$ 50.00	each
Prestressing Steel Strand Tensile Test	ASTM A416/A1061	\$ 420.00	each
Reinforcing Steel (Rebar) Tensile Test			
Up to No. 7	ASTM A615, A706/A370	\$ 100.00	each
From No. 8 through No. 14	ASTM A615, A706/A370	\$ 130.00	each
Reinforcing Steel (Rebar) Bend Test	ASTM A615, A706/A370	\$ 55.00	each
Structural Steel Tensile Test			
Up to 3/4"	ASTM A370	\$ 115.00	each
Sizes Larger Than 3/4"	ASTM A370	\$ 125.00	each
Machining of Test Specimens		cost	plus 20%
Structural Steel Hardness Test	ASTM E18	\$ 90.00	each
Weld Assembly, Guided Bend/Macroetch/T-Bend Test	AWS D1.1, ASTM E190	\$ 90.00	per test
Welder Qualification Test Inspection		\$ 110.00	per hour
Welder Qualification Test Record		\$ 105.00	each
Laboratory Technician		\$ 110.00	per hour

