

Professional Services Agreement

This Agreement is entered into between the Alameda Unified School District (AUSD) and Terracon Consultants, Inc. (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 (include location, dates, to whom services are provided):

Terracon is tasked to provide construction testing materials testing and special inspection services to support the structural upgrades for a Measure B project Alameda High School Kofman Theater located at 2200 Central Avenue, Alameda, CA.

2. **Terms.** The term of this agreement shall be from 02/05/24 (or the day immediately following approval by the Superintendent or Assistant Superintendent(s) per (Education Code(s) §35161 and §17604) if the aggregate amount CONTRACTOR contracted with AUSD is below \$114,500; or, approval by the Board of Education if the total contract(s) exceeds \$114,500) to 04/30/24. The work shall be completed no later than 03/30/24.

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 \$_____.
- 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: \$13,580.00 per attached proposal 11/06/2023.

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:

4.1 ☐ **School-based Agreements:** How does this service support academic goals and increase student achievement as described in the Board-approved School Site Plan? _____

4.2 ☒ **Central Office Agreements:** How does this service support the overall strategic goals of the department and increase student achievement? Professional testing for safe and compliant construction of the facility.

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 AUSD prior to starting work or records are already on file.

5.1.2 ☐ Agency certifies that they require all employees or subcontractors to complete TB testing and maintain such records.

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.

TMS _____ (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 AUSD prior to starting work or records are already on file.

5.2.2 ☐ Agency certifies that they require all employees or subcontractors to complete fingerprinting and maintains such records.

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 and constant 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 services under this Agreement;

TMS (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 TMS

☐ 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 endorse AUSD as an additional insured. 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. Failure to maintain coverage during the term of the contract will result in termination.

*CONTRACTOR acknowledgement TMS

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.

-----TMS----- (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

Title: Senior Director of Construction

Address: 2060 Challenger Drive

Alameda, CA 94501

Email: Rlyng@alamedaunified.org

CONTRACTOR:

Name: Troy Michael Schiess

Title: Office Manager III

Address: 902 Industrial Way

Lodi, CA 95240

Email: troy.schiess@terracon.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,

negligent

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 AUSD.


I. SITE

CONTRACTORPrint Name & Title: Troy M. Schiess, Principal, Office Manager

CONTRACTOR Signature: _____

Date: 02/01/2024**SOURCE OF FUNDS (check appropriate):**Unrestricted Funds (Fund 01) ☐Donated Funds ☐Restricted Funds ☒

Budget Code: _____

21-9504-0-0000-8500-6215-022-77-3034
Robbie Lyng (Feb 7, 2024 10:13 PST)

Requesting Administrator

02/07/2024

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.

SEND TO: Business Services

II. HR

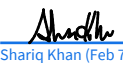
Human Resource Approval ☐ Yes ☐ No02/07/2024

Signature of Human Resource Administrator

Date

III. BOARD DELEGATES

- ☐ 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 (Feb 7, 2024 10:37 PST)

Signature of Superintendent or Assistant Superintendent

02/07/2024

Date

IV. BOARD

BOE Approval Required for Contracts Equal To Or Greater Than \$114,500:_____
Signature of President, Board of Education_____
Date_____
Signature of Secretary, Board of Education_____
Date

AGREEMENT FOR SERVICES

This **AGREEMENT** is between Alameda Unified School District ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the Alameda HS Kofman Theater Steel Testing project ("Project"), as described in Consultant's Proposal dated 11/06/2023 ("Proposal"), including but not limited to the Project Information section, unless the Project is otherwise described in Exhibit A to this Agreement (which section or Exhibit is incorporated into this Agreement).

- 1. Scope of Services.** The scope of Consultant's services is described in the Proposal, including but not limited to the Scope of Services section ("Services"), unless Services are otherwise described in Exhibit B to this Agreement (which section or exhibit is incorporated into this Agreement). Portions of the Services may be subcontracted. Consultant's Services do not include the investigation or detection of, nor do recommendations in Consultant's reports address the presence or prevention of biological pollutants (e.g., mold, fungi, bacteria, viruses, or their byproducts) or occupant safety issues, such as vulnerability to natural disasters, terrorism, or violence. If Services include purchase of software, Client will execute a separate software license agreement. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.
- 2. Acceptance/ Termination.** Client agrees that execution of this Agreement is a material element of the consideration Consultant requires to execute the Services, and if Services are initiated by Consultant prior to execution of this Agreement as an accommodation for Client at Client's request, both parties shall consider that commencement of Services constitutes formal acceptance of all terms and conditions of this Agreement. Additional terms and conditions may be added or changed only by written amendment to this Agreement signed by both parties. In the event Client uses a purchase order or other form to administer this Agreement, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This Agreement shall not be assigned by either party without prior written consent of the other party. Either party may terminate this Agreement or the Services upon written notice to the other. In such case, Consultant shall be paid costs incurred and fees earned to the date of termination plus reasonable costs of closing the Project.
- 3. Change Orders.** Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. If Client does not follow these procedures, but instead directs, authorizes, or permits Consultant to perform changed or additional work, the Services are changed accordingly and Consultant will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.
- 4. Compensation and Terms of Payment.** Client shall pay compensation for the Services performed at the fees stated in the Proposal, including but not limited to the Compensation section, unless fees are otherwise stated in Exhibit C to this Agreement (which section or Exhibit is incorporated into this Agreement). If not stated in either, fees will be according to Consultant's current fee schedule. Fee schedules are valid for the calendar year in which they are issued. Fees do not include sales tax. Client will pay applicable sales tax as required by law. Consultant may invoice Client at least monthly and payment is due upon receipt of invoice. Client shall notify Consultant in writing, at the address below, within 15 days of the date of the invoice if Client objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. Client shall pay a finance fee of 1.5% per month, but not exceeding the maximum rate allowed by law, for all unpaid amounts 30 days or older. Client agrees to pay all collection-related costs that Consultant incurs, including attorney fees. Consultant may suspend Services for lack of timely payment. It is the responsibility of Client to determine whether federal, state, or local prevailing wage requirements apply and to notify Consultant if prevailing wages apply. If it is later determined that prevailing wages apply, and Consultant was not previously notified by Client, Client agrees to pay the prevailing wage from that point forward, as well as a retroactive payment adjustment to bring previously paid amounts in line with prevailing wages. Client also agrees to defend, indemnify, and hold harmless Consultant from any alleged violations made by any governmental agency regulating prevailing wage activity for failing to pay prevailing wages, including the payment of any fines or penalties.
- 5. Third Party Reliance.** This Agreement and the Services provided are for Consultant and Client's sole benefit and exclusive use with no third party beneficiaries intended. Reliance upon the Services and any work product is limited to Client, and is not intended for third parties other than those who have executed Consultant's reliance agreement, subject to the prior approval of Consultant and Client.
- 6. LIMITATION OF LIABILITY.** CLIENT AND CONSULTANT HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING CONSULTANT'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE ASSOCIATED RISKS. TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF CONSULTANT (AND ITS RELATED CORPORATIONS AND EMPLOYEES) TO CLIENT AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$10,000 OR CONSULTANT'S FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF CONSULTANT'S SERVICES OR THIS AGREEMENT. PRIOR TO ACCEPTANCE OF THIS AGREEMENT AND UPON WRITTEN REQUEST FROM CLIENT, CONSULTANT MAY NEGOTIATE A HIGHER LIMITATION FOR ADDITIONAL CONSIDERATION IN THE FORM OF A SURCHARGE TO BE ADDED TO THE AMOUNT STATED IN THE COMPENSATION SECTION OF THE PROPOSAL. THIS LIMITATION SHALL APPLY REGARDLESS OF AVAILABLE PROFESSIONAL LIABILITY INSURANCE COVERAGE, CAUSE(S), OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER CONSULTANT'S COMMERCIAL GENERAL LIABILITY POLICY.
- 7. Indemnity/Statute of Limitations.** Consultant and Client shall indemnify and hold harmless the other and their respective employees from and against legal liability for claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are legally determined to be caused by their negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are legally determined to be caused by the joint or concurrent negligence of Consultant and Client, they shall be borne by each party in proportion to its own negligence under comparative fault principles. Neither party shall have a duty to defend the other party, and no duty to defend is hereby created by this indemnity provision and such duty is explicitly waived under this Agreement. Causes of action arising out of Consultant's Services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Consultant's substantial completion of Services on the project.
- 8. Warranty.** Consultant will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. **EXCEPT FOR THE STANDARD OF CARE PREVIOUSLY STATED, CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- 9. Insurance.** Consultant represents that it now carries, and will continue to carry: (i) workers' compensation insurance in accordance with the laws of the states having jurisdiction over Consultant's employees who are engaged in the Services, and employer's liability insurance (\$1,000,000); (ii) commercial general liability insurance (\$2,000,000 occ / \$4,000,000 agg); (iii) automobile liability insurance (\$2,000,000 B.I. and P.D. combined single limit); (iv) umbrella liability (\$5,000,000 occ / agg); and (v) professional liability insurance (\$1,000,000 claim / agg). Certificates of insurance will be provided upon request. Client and Consultant shall waive subrogation against the other party on all general liability and property coverage.

- 10. CONSEQUENTIAL DAMAGES.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OR OPPORTUNITY; LOSS OF GOOD WILL; COST OF SUBSTITUTE FACILITIES, GOODS, OR SERVICES; COST OF CAPITAL; OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.
- 11. Dispute Resolution.** Client shall not be entitled to assert a Claim against Consultant based on any theory of professional negligence unless and until Client has obtained the written opinion from a registered, independent, and reputable engineer, architect, or geologist that Consultant has violated the standard of care applicable to Consultant's performance of the Services. Client shall provide this opinion to Consultant and the parties shall endeavor to resolve the dispute within 30 days, after which Client may pursue its remedies at law. This Agreement shall be governed by and construed according to Kansas law.
- 12. Subsurface Explorations.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. Client understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, Client accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the Services.
- 13. Testing and Observations.** Client understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Consultant will provide test results and opinions based on tests and field observations only for the work tested. Client understands that testing and observation are not continuous or exhaustive, and are conducted to reduce - not eliminate - project risk. Client shall cause all tests and inspections of the site, materials, and Services performed by Consultant to be timely and properly scheduled in order for the Services to be performed in accordance with the plans, specifications, contract documents, and Consultant's recommendations. No claims for loss or damage or injury shall be brought against Consultant by Client or any third party unless all tests and inspections have been so performed and Consultant's recommendations have been followed. Unless otherwise stated in the Proposal, Client assumes sole responsibility for determining whether the quantity and the nature of Services ordered by Client is adequate and sufficient for Client's intended purpose. Client is responsible (even if delegated to contractor) for requesting services, and notifying and scheduling Consultant so Consultant can perform these Services. Consultant is not responsible for damages caused by Services not performed due to a failure to request or schedule Consultant's Services. Consultant shall not be responsible for the quality and completeness of Client's contractor's work or their adherence to the project documents, and Consultant's performance of testing and observation services shall not relieve Client's contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. Consultant will not supervise or direct the work performed by Client's contractor or its subcontractors and is not responsible for their means and methods. The extension of unit prices with quantities to establish a total estimated cost does not guarantee a maximum cost to complete the Services. The quantities, when given, are estimates based on contract documents and schedules made available at the time of the Proposal. Since schedule, performance, production, and charges are directed and/or controlled by others, any quantity extensions must be considered as estimated and not a guarantee of maximum cost.
- 14. Sample Disposition, Affected Materials, and Indemnity.** Samples are consumed in testing or disposed of upon completion of the testing procedures (unless stated otherwise in the Services). Client shall furnish or cause to be furnished to Consultant all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, toxic, radioactive, or contaminated materials ("Affected Materials") at or near the site, and shall immediately transmit new, updated, or revised information as it becomes available. Client agrees that Consultant is not responsible for the disposition of Affected Materials unless specifically provided in the Services, and that Client is responsible for directing such disposition. In no event shall Consultant be required to sign a hazardous waste manifest or take title to any Affected Materials. Client shall have the obligation to make all spill or release notifications to appropriate governmental agencies. The Client agrees that Consultant neither created nor contributed to the creation or existence of any Affected Materials conditions at the site and Consultant shall not be responsible for any claims, losses, or damages allegedly arising out of Consultant's performance of Services hereunder, or for any claims against Consultant as a generator, disposer, or arranger of Affected Materials under federal, state, or local law or ordinance.
- 15. Ownership of Documents.** Work product, such as reports, logs, data, notes, or calculations, prepared by Consultant shall remain Consultant's property. Proprietary concepts, systems, and ideas developed during performance of the Services shall remain the sole property of Consultant. Files shall be maintained in general accordance with Consultant's document retention policies and practices.
- 16. Utilities.** Unless otherwise stated in the Proposal, Client shall provide the location and/or arrange for the marking of private utilities and subterranean structures. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to subterranean structures or utilities that are not called to Consultant's attention, are not correctly marked, including by a utility locate service, or are incorrectly shown on the plans furnished to Consultant.
- 17. Site Access and Safety.** Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees, but shall not be responsible for the supervision or health and safety precautions for any third parties, including Client's contractors, subcontractors, or other parties present at the site. In addition, Consultant retains the right to stop work without penalty at any time Consultant believes it is in the best interests of Consultant's employees or subcontractors to do so in order to reduce the risk of exposure to unsafe site conditions. Client agrees it will respond quickly to all requests for information made by Consultant related to Consultant's pre-task planning and risk assessment processes.

Consultant: **Terracon Consultants, Inc.**

By:  Date: **11/16/2023**

Name/Title: **Troy Michael Schiess / Office Manager III**

Address: **902 Industrial Way
Lodi, CA 95240-3106**

Phone: **(209) 367-3701** Fax: **(209) 333-8303**

Email: **Troy.Schiess@terracon.com**

Client: **Alameda Unified School District**

By: _____ Date: _____

Name/Title: **Robbie Lyng / Senior Director of Construction
- Maintenance, Operations & Facilities**

Address: **2060 Challenger Dr
Alameda, CA 94501-1037**

Phone: **(510) 337-7000** Fax: _____

Email: **RLyng@alamedaunified.org**

AGREEMENT FOR SERVICES

Reference Number: PNA231298

Date of Agreement: 11/16/2023

EXHIBIT A Project Information

Terracon is tasked to provide construction testing materials testing and special inspection services to support the structural upgrades for the stage at Alameda High School Kofman Theater located at 2200 Central Avenue, Alameda, CA. We understand that project includes replacement & upgrades to stage rigging & projector screen systems, replacement of existing fire curtain and associated track assembly, installation of production speakers, and structural & electrical work in support of theatrical upgrades at the Historic Alameda HS Kofman Auditorium.

EXHIBIT B Scope of Services

Terracon will provide construction materials and testing services as needed throughout the project, on an as-requested basis. Our understanding of the required construction materials services for this project is based on our experience with similar projects.

The general services estimated to be provided by Terracon on this project may include the following:

- **Post-Installed Anchors in Concrete**
 - Inspect installation of post-installed anchors;
 - Test post-installed anchors (if required)
- **Structural Steel, Cold-Formed Steel and Aluminum Used For Structural Purposes**
 - Verify identification of all materials and
 - Mill certificates indicate material properties that comply with requirements;
 - Material sizes, types and grades comply with requirements
 - Test unidentified materials
 - Verify and document steel fabrication per DSA-approved construction documents
- **Structural Steel Services;**
 - Verify weld filler material identification markings per AWS designation listed on the DSA-approved documents and the WPS. Verify weld filler material manufacturer's certificate of compliance and verify WPS, welder qualifications and equipment.
 - Shop & Field Welding
 - Inspect groove welds, multi-pass fillet welds, single pass fillet welds > 5/16", plug and slot welds
 - Inspect single-pass fillet welds ≤ 5/16", floor and roof deck welds
 - Inspect welding of stairs and railing systems
 - Inspect end-welded studs (ASTM A-108) installation (including bend test);
 - Inspect floor and roof deck welds;
 - Inspect welding of structural cold-formed steel;
 - Inspect welding of stairs and railing systems;
- **Non-Destructive Testing**
 - Ultrasonic

The project includes two phases.

Phase 1 (Task 1): Structural Materials Testing of Steel Beams

The samples are going to be obtained by Lathrop Construction and delivered to Terracon for the testing. The samples will be taken from the two specific steel I beams that are about 50 ft above the wood framed stage as indicated on ZFA's Testing Sheet A-2.3. Terracon's scope is limited to overseeing the sampling and provide the following laboratory testing and reporting for structural steel samples.

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1. Yield and tensile strength per ASTM A370 of two separate samples that are approximately 2"x8" that will be taken from the web of an existing I beams.
2. Steel chemical composition analysis, including carbon equivalent for determining weldability, per the AWS D1.1 Section 8.

Phase 2 (Task 2): Construction Phase - Structural Inspections and Testing

1. This phase includes structural work for the theatrical rigging installation, theatrical lighting rigging at both sides of auditorium balcony, and at face of balcony knee wall facing center stage. (Sheet A-10.1, Det. 18 and S-01) and HM Frame Base Anchors.

EXHIBIT C Compensation

Terracon will provide the scope of services listed above on a time and materials basis in accordance with the following rates:

■ Senior Engineer	\$240/hour
■ Project Manager	\$225/hour
■ Administrative Staff	\$120/hour
■ Certified Welding Inspector	\$180/hour
■ Special Inspector (Reinf., Concrete, Anchor, Masonry, PT, Fireproofing)	\$175/hour
■ Steel Chemical Composition Analysis	\$780/each
■ Yield & Tensile Strength w/ Machining (ASTM A370)	\$400/each
■ PE Review / Daily Report	\$115/each
■ Mileage Charge (Project Site)	\$75/trip
■ Final Compliance Letter (if requested)	\$350/each

Based on these rates, information provided, and noted assumptions, we recommend an allowance of **\$13,580** for the proposed services on this project. The total fee will be based on quantity and duration of the inspections requested at the applicable unit rates. The total budget may be reduced by combining multiple services into each trip should the schedule allow, as many of our technicians are cross trained for multiple services. The time required for construction materials testing on the project will be directly related to the schedule and performance of the various contractors on the site and how many trips are made to the site.

Terracon is not responsible for scheduling or methods employed by the client's separate contractors, consultants, agents, and other representatives. Accordingly, the client will be responsible for any additional fees invoiced because of unforeseen delays in work progress or retesting resulting from the inability of the client's separate contractors, consultants, agents, and other representatives to produce a work product in conformance with the project plans and specifications. Additional services requested beyond what is outlined in this proposal will be billed per our current Schedule of Services and Fees.

The above estimate for services is based upon our understanding of the project and our experience with similar projects. The total fee could vary depending on the actual construction schedule and number of trips made to the project site. Once a construction schedule is available for our review, we would be happy to revisit the above cost estimate.

The following assumptions were used in preparing this proposal:

- The project IS subject to California Prevailing Wage Law.
- We assume one visit to oversee the steel sampling for Phase 1.
- We assumed the following inspections for the Phase 2.
Welding Inspections (3 site visits) for the theatrical rigging installation, theatrical lighting rigging at both sides of auditorium balcony, and at face of balcony knee wall facing center stage. (Sheet A-10.1, Det. 18 and S-01)
Post installed anchor inspection (2 site visit) for the HM Frame Base Anchors (Sheet A-8.1)
- Our fees for trips to the site will be charged portal to portal from our nearest office and laboratory (Concord, CA), approximately 27 miles from the jobsite. Typical travel times can vary between 30 minutes to 45 minutes, each way.
- Time will be charged in 4- and 8-hour increments. Time worked more than 8 hours per day and Saturdays will be charged at 1.5 times the hourly rate. Time worked on Holidays, Sundays and for Saturdays after 8 hours, or

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weekdays after 12 hours will be charged at 2 times the hourly rate. Night shifts will be charged at 1.5 times the hourly rate, 6 pm to 4 am. Overtime and double time rates will be applied per California Labor law.

- Testing and inspection services must be scheduled by the client/contractor with a 24-hour notice to our scheduling line (209-263-0593) and/or by 12:00 pm the day before the inspection is needed, whichever is earlier. Our services are provided on an on-call, as requested basis either by the client's representative or client's contractor. Terracon will not be responsible for scheduling our services and will not be responsible for tests that are not performed due to failure to schedule our services.
- Terracon's services specifically exclude job site safety responsibility.
- Our services do not relieve any contractor/subcontractor from complying with project plans and specifications.

Fee Estimate						
Materials Services						
Alameda HS Kofman Theater Steel Testing						
Terracon Proposal No. PNA231298						
DESCRIPTION	RATE	QUANTITY	UNITS	TRIPS	TOTAL QUANTITY	TOTAL
PERSONNEL						
Senior Engineer						
Senior Engineer	\$ 240.00	4 hours		1	4	\$ 960.00
Sub Total						\$ 960.00
Project Manager						
Project Manager	\$ 225.00	4 hours		1	4	\$ 900.00
Sub Total						\$ 900.00
Administrative Staff						
Administrative Staff	\$ 120.00	4 hours		1	4	\$ 480.00
Sub Total						\$ 480.00
PHASE 1						
Special Inspection						
Special Inspector	\$ 175.00	8 hours		1	8	\$ 1,400.00
PM Review / Daily Report	\$ 115.00	1 hours		1	1	\$ 115.00
Mileage Charge	\$ 75.00	1 trips		1	1	\$ 75.00
Sub Total						\$ 1,590.00
PHASE 2						
Welding Inspection						
PM Review / Daily Report	\$ 115.00	1 hours		3	3	\$ 345.00
Welding Inspector	\$ 180.00	8 hours		3	24	\$ 4,320.00
Mileage Charge	\$ 75.00	1 trips		3	3	\$ 225.00
Sub Total						\$ 4,890.00
Post-Installed Anchor Inspection						
Special Inspector	\$ 175.00	8 hours		2	16	\$ 2,800.00
PM Review / Daily Report	\$ 115.00	1 hours		2	2	\$ 230.00
Mileage Charge	\$ 75.00	1 trips		2	2	\$ 150.00
Sub Total						\$ 3,180.00
LABORATORY						
Steel Chemical Composition Analysis	\$ 780.00	1 tests		1	1	\$ 780.00
Yield & Tensile Strength w/ Machining (ASTM A370)	\$ 400.00	2 tests		1	2	\$ 800.00
Sub Total						\$ 1,580.00
TOTAL						\$ 13,580.00