

NEWPORT-MESA UNIFIED SCHOOL DISTRICT
MASTER PROFESSIONAL SERVICES AGREEMENT

Construction Managements Services

THIS MASTER PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into this 14 day of September 2021 by and between NEWPORT-MESA UNIFIED SCHOOL DISTRICT ("District") and Safework, Inc., dba SafeworkCM), a Professional Services Construction Management firm ("Consultant" or "Safework"). District and Consultant may be collectively referred to as the "Parties" and individually as a "Party."

RECITALS

A. District is a California school district and is in need of professional construction management services for District's District-Wide Construction Program for projects as assigned ("Project").

B. Consultant is a duly licensed business in the State of California and has the necessary qualifications to provide such services.

C. The Parties desire to enter into this Agreement for the purpose of setting forth the terms and conditions upon which Consultant shall render certain services to District.

NOW, THEREFORE, THE PARTIES HERETO HEREBY AGREE AS FOLLOWS:

ARTICLE 1

Scope of Services to be Performed

1.1 Scope of Services to be Performed. The scope of services to be provided by Consultant is set forth in Exhibit "A" attached hereto and by this reference incorporated herein ("Scope of Services"). Consultant warrants that all work and services set forth in the Scope of Services ("Services") will be performed in a competent, professional and satisfactory manner.

1.2 Task Orders. District may, from time to time, make changes or authorize certain work set forth in the Scope of Services, including, but not limited to, issuance of additional instructions, require additional work, or direct omissions of work previously ordered by issuing a Task Order to Consultant ("Task Order") and the provisions of this Agreement shall apply to all such Task Orders. The Task Order shall be in such form and content as set forth in Exhibit "B" attached hereto and by this reference incorporated herein. Consultant shall not perform and District shall not be liable for any services performed by Consultant unless written authorization from District is given to Consultant prior to the performance of such work. The cost of such Task Orders which may or may not add to or reduce the work called for hereunder and any extension of completion date that might be required thereby, shall be mutually agreed upon in writing by District and Consultant before commencement of the work called for by such Task Order.

1.3 Conformance to Applicable Requirements. All work prepared by Consultant is subject to the approval of the District and any and all applicable regulatory State agencies and shall be the property of the District.

1.4 Reports. Consultant shall provide copies of all reports required to be submitted to applicable regulatory State agencies to the District, whether or not such reports must be submitted to the District.

1.5 Permits, Licenses, Fees and Other Charges. Consultant shall, in accordance with applicable laws and ordinances, obtain at its expense all permits and licenses necessary to accomplish the Scope of Services and shall give all notices necessary. Failure to maintain a required license or permit may result in immediate termination of this Agreement.

1.6 Time to Perform Services. Consultant shall perform the services in accordance with the schedule set forth in each Task Order. Consultant shall commence work immediately upon receipt of a written request from District. District will have no obligation to pay for any services rendered by Consultant in advance of receipt of the written request, and Consultant acknowledges that any such services are at Consultant's own risk. Consultant shall confer as requested with District representatives to review progress of work elements, adherence to work schedule, coordination of work, scheduling of review and resolution of problems which may develop.

1.7 Qualifications. Consultant represents and warrants to District that it has and will maintain during the duration of this Agreement the qualifications, experience, licenses, and facilities necessary to properly perform the Scope of Services in a competent and professional manner.

1.8 Coordination of Services. Consultant agrees to work closely with District staff in the performance of Services and shall be available to District staff, consultants and other staff at all reasonable times.

1.9 Standard of Care. Consultant shall perform all Services under this Agreement in a skillful, competent and timely manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all of Consultant's employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents that it, its employees and subcontractors or subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any of Consultant's employees who are determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any of Consultant's employees who fail or refuse to perform the Services in a manner acceptable to the District, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

ARTICLE 2

Payment for Services Rendered/Reimbursement

2.1 Payment for Services Rendered. District shall compensate Consultant for the services performed pursuant to this Agreement in the amount computed pursuant to the Task Order for each Assigned Project, which shall be computed in accordance with Exhibit "C" attached hereto and by this reference incorporated herein ("Compensation"). In no event shall

the total amount paid for services rendered by Consultant under this Agreement exceed the sum of

2.2 Billing Procedure.

(a) Consultant shall submit, on or before the twentieth (20th) day of each month, to District, accurate, detailed and complete statements for services ("Invoices") actually performed during the previous month. The Invoices shall specify the percentage of completion (as of the end of the preceding month) of the work and compensation due Consultant. The Invoices shall be supported by such data substantiating the Consultant's right to payment as District may require.

(b) Payment shall not constitute acceptance of any work completed by Consultant.

(c) The making of final payment shall not constitute a waiver of any claims by District for any reason whatsoever.

2.3 Payment. District shall make payment to Consultant within thirty (30) days of receipt of an undisputed Invoice or the resolution of any billing dispute. District may withhold a portion of an application for payment because of defective work not remedied or unsatisfactory prosecution of the work by the Consultant. District will release any withheld funds upon Consultant satisfactorily remedying the issue that resulted in the withholding. District will not pay late fees to the Consultant on the compensation due Consultant under the terms of this Agreement.

ARTICLE 3

Accounting, Inspection and Audit

3.1 Records. Consultant shall keep and shall preserve for four (4) years after final completion of the Services, accurate and detailed records of all ledgers, books of account, invoices, vouchers, cancelled checks, and other documents or records evidencing or relating to the work, services and disbursements charged to District under this Agreement (collectively, "Books and Records"). Any and all Books and Records must be maintained in accordance with generally accepted accounting principles and must be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Consultant under this Agreement. During such four (4) year period, Consultant shall give District and its agents, during normal business hours, access to such Books and Records. District and its agents shall have the right to make copies of any of the said Books and Records.

3.2 Custody. Where District has reason to believe that any of the Books and Records required to be maintained by this Article may be lost or discarded due to dissolution or termination of Consultant's business, District may, by written request, require that custody of such Books and Records be given to a person or entity mutually agreed upon and such Books and Records thereafter shall be maintained by such person or entity at Consultant's expense. Access to the Books and Records shall be granted to District and its Representatives.

ARTICLE 4

Termination

4.1 Termination. District may terminate the Agreement, in whole or in part, with or without cause, upon ten (10) days written notice to Consultant. Upon receipt of the termination notice, Consultant shall promptly discontinue services unless the notice directs to the contrary. In the event District renders such written notice to Consultant, Consultant shall be entitled to compensation for all services properly rendered prior to the effective date of the notice and all further services set forth in the notice. District shall be entitled to reimbursement for any compensation paid in excess of services properly rendered and shall be entitled to withhold compensation for defective work or other damages caused by Consultant's services. Consultant acknowledges District's right to terminate this Agreement as provided in this Section, and hereby waives any and all claims for damages that might arise from District's termination of this Agreement. Consultant shall deliver to District and transfer title (if necessary) to all completed work, and work in progress including drafts, documents, plans, forms, maps, products, graphics, computer programs and reports. District shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services and shall not be entitled to damages or compensation for termination of work.

ARTICLE 5

California Labor Code Provisions

5.1 Prevailing Wage Rates. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws, if applicable. Consultant shall defend, indemnify and hold District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or ~~tax~~ arising out of any failure or alleged failure to comply with the Prevailing Wage Laws for Consultant's employees. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

5.2 Registration. If the Services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

5.3 Labor Compliance. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any

subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the District. Consultant shall defend, indemnify and hold the District, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

5.4 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self- insurance in accordance with the provisions of that Code and agrees to comply with such provisions before commencing the performance of the Services.

ARTICLE 6

Project Manager

6.1 Representative of Consultant. Michael Villegas ("Consultant Representative") is hereby designated as the principal and representative of Consultant authorized to act on its behalf with respect to the work and services specified herein and to make all decisions in connection herewith. Consultant shall not substitute any person as Consultant Representative without first notifying District in writing of Consultant's intent. District shall have the right to review the qualifications of said substitute. If District determines said substitute Consultant Representative is unacceptable, Consultant shall submit alternate candidates until District determines that substitute Consultant Representative is acceptable.

6.2 Representative of District. Ara Zareczny is hereby designated as the representative of District and except as otherwise provided herein authorized to act on its behalf with respect to the work and services specified herein and make all decisions in connection therewith.

ARTICLE 7

Work Product

7.1 Work Product. All original papers, maps, models, designs, studies, surveys, reports, data, notes, computer files, documents, drawings and other work product (collectively "Work Product") of Consultant produced by Consultant pursuant to this Agreement, except documents which are required to be and have been filed with public agencies other than the District, shall be deemed solely the property of District. Consultant will take such steps as are necessary to perfect or protect the ownership interest of District in such Work Product. Upon completion, expiration or termination of this Agreement, Consultant shall turn over to District all such original Work Product in Consultant's possession or control.

ARTICLE 8

Insurance

8.1 Insurance. Consultant agrees to procure and maintain, at Consultant's expense all insurance specified in Exhibit "D" attached hereto and by this reference incorporated herein. Consultant shall require all subconsultants to carry the same policies and limits of insurance that

the Consultant is required to maintain pursuant to this Article, unless otherwise approved in writing by District, and shall furnish separate certificates and endorsements for each subcontractor.

8.2 Failure to Provide Insurance. If Consultant fails or refuses to procure or to maintain the insurance as required by this Agreement or fails or refuses to furnish District with required proof that the insurance has been procured and is in force and paid for, District shall have the right, at District's election and upon twenty (20) days' notice to Consultant to procure and maintain such insurance. The premiums paid by District shall be treated as an amount due from Consultant with interest at the rate of ten percent (10%), to be paid on the first (1st) day of the month following the date on which the premiums were paid. District shall have the right to offset any amounts District pays hereunder with amounts due Consultant for services rendered pursuant to this Agreement. District shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer or insurers, and interest shall run from the date of the notice.

ARTICLE 9

Indemnification

9.1 Consultant's Duty to Indemnify. To the fullest extent permitted by law, Consultant shall indemnify and hold the District, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any negligent acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subconsultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the District, its officials, officers, employees, agents, or volunteers. Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

ARTICLE 10

General Provisions

10.1 Notices. Any notice to be given by any Party hereunder must be given in writing and delivered in person, or by reputable nationwide overnight courier (e.g., Federal Express), or forwarded by certified or registered mail, postage prepaid, return receipt requested, at the address indicated below, unless the Party giving such notice has been notified, in writing, of a change of address:

DISTRICT:

Newport-Mesa Unified School District
2985 Bear Street
Costa Mesa, CA 92626
Attention: Ara Zareczny

CONSULTANT:

SafeworkCM
1 Jenner, Suite 240
Irvine, CA 92618
Attention: Domingo Camarano, President

Any such notice is effective on the date on which such notice is delivered, if notice is given by personal delivery or overnight courier, or if notice is sent through the United States mail, on the date of actual delivery as shown by the addressee's receipt or upon the expiration of three (3) days following the date of mailing, whichever first occurs.

10.2 Separate Contracts. Consultant understands that this is not an exclusive Agreement and that District shall have the right to negotiate with and enter into separate contracts with others providing the same or similar services as those provided by Consultant as District desires.

10.3 Notification. In the event of a problem or potential problem that could impact the quality or quantity of work, services or the level of performance under this Agreement, the Consultant shall, within one (1) business day of actual knowledge of the problem or potential problem, notify District in writing and by telephone.

10.4 Compliance. All work, labor and materials shall be done and provided in strict conformity with each of the following: (i) all laws, ordinances, codes, rules, regulations and standard specifications of governmental authorities having jurisdiction over Consultant's work; and (ii) this Agreement. Consultant shall also comply, at Consultant's expense, with all requirements of inspectors of any governmental authority having jurisdiction over Consultant's work. The Consultant will be responsible for securing any and all required governmental inspections and approvals for the work completed under this Agreement.

10.5 Disputes. If any disputes should arise between the Parties concerning the work to be done under this Agreement, the payments to be made, or the manner of accomplishment of the work, Consultant shall nevertheless proceed to perform the work as directed by District pending settlement of the dispute.

10.6 No Waiver. The fact that District has made payment under this Agreement shall not be interpreted so as to imply District has inspected, approved or accepted the work which has been performed by Consultant. No delay or omission in the exercise of any right or remedy by the non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. A Party's consent to or approval of any act by the other Party requiring the Party's consent or approval shall not be deemed to waive or render unnecessary the other Party's consent to or approval of any subsequent act. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Agreement.

10.7 Assignment and Subcontractors. Consultant shall not assign or subcontract any portion of the work to be performed under this Agreement or any of the rights or obligations under this Agreement, without the prior written consent of District, which consent may be withheld in District's sole and absolute discretion. Any attempted assignment in violation of the provisions of this paragraph shall be void.

10.8 Independent Contractor. The Consultant shall act as an independent contractor in the performance of the services provided for in this Agreement and shall furnish such services in Consultant's own manner and method and in no respect shall Consultant be considered an agent or employee of District, maintaining complete control over all men and operations. No provisions of this Agreement shall be intended to create a partnership or joint venture between Consultant and District and neither Party shall have the power to bind or obligate the other Party, except as expressly set forth in this Agreement.

10.9 Non-Liability of District Officials and Employees. No official or employee of District shall be personally liable to the Consultant in the event of any default or breach by District or for any amount which may become due to the Consultant or for any breach of the terms of this Agreement.

10.10 Conflict of Interest. No director, officer or employee of District shall have any financial interest, direct or indirect, in this Agreement nor shall any such director, officer or employee participate in any decision relating to this Agreement which affects his/her financial interest or the financial interest of any corporation, partnership, entity or association in which he/she is directly or indirectly interested, in violation of any state or federal statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

10.11 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of the District's Minority Business Enterprise program, if any, or other related programs or guidelines currently in effect or hereinafter enacted. Additionally, Education Code Section 17076.11 requires a good faith effort to reach a three percent (3%) utilization goal for Disabled Veteran Business Enterprise (DVBE) entities on projects funded in whole or in part by the Office of Public School Construction. Consultant must make a good faith effort to contact and utilize DVBE subcontractors or subconsultants and suppliers in securing bids for performance of the Agreement and shall be required to certify its good faith efforts towards retaining DVBE subcontractors or subconsultants and suppliers and identify DVBE firms utilized in performance of the Agreement when awarded a Task Order.

10.12 Fingerprinting Requirements. Consultant hereby acknowledges that, if applicable, as determined by the District in its sole discretion, it is required to comply with the requirements of Education Code Section 45125.1 with respect to fingerprinting of employees who may have contact with the District's pupils. The Consultant shall also ensure that its consultants on the Project also comply with the requirements of Section 45125.1. If required by Education Code Section 45125.1 or the District, the Consultant must provide for the completion of a Fingerprint Certification form, in the District's required format, prior to any of the Consultant's employees, or those of any other consultants, coming into contact with the District's pupils. Consultant further acknowledges that other fingerprinting requirements may apply, as set forth in Education Code Section 45125 et seq., and will comply with any such requirements.

10.13 Drug/Tobacco-Free Facilities. All District facilities are drug and tobacco-free facilities. Any drug and/or tobacco use (smoked or smokeless) is prohibited at all times on all areas of the District facilities.

10.14 Best Efforts. The Consultant recognizes the relations of trust and confidence that are established by this Agreement, and covenants with District to furnish his/her best skill and judgment, and to actively cooperate and assist in furthering the best interests of District in all matters pertaining to the work. The Consultant agrees to furnish efficient business administration and capable supervision, and to use every effort to keep upon the work an adequate supply of workmen and materials in order to secure its execution in the most expeditious and economical manner consistent with District's best interests. The Consultant's employees assigned to the work shall at all times be reasonably satisfactory to District.

10.15 Confidential Information. All information gained or Work Product produced by Consultant in the performance of this Agreement will be considered confidential, unless such information is in the public domain. Consultant shall not release or disclose any such information or Work Product to persons or entities other than District without the prior written consent of the District, except as otherwise required by law. Consultant shall promptly notify District should Consultant, or its Representatives be served summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions or other discovery request or court order from any third party regarding this Agreement and the services performed under this Agreement.

10.16 Board Approval Required. This Agreement shall not be binding nor take effect unless approved or ratified by the District's governing board. Any amendments to this Agreement shall require Board approval or ratification.

10.17 Amendment. This Agreement may not be amended except by a subsequent writing which is signed by the Parties.

10.18 Cooperation. Consultant shall cooperate in the performance of work with District and all other agents.

10.19 Incorporation of Recitals. The Recitals and section titles set forth herein are incorporated herein and are an operative part of this Agreement.

10.20 Governing Law, Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The Parties agree that any action or proceeding to enforce or relating to this Agreement shall be brought exclusively in the federal or state courts located in Orange County, California, and the Parties hereto consent to the exercise of personal jurisdiction over them by any such courts for purposes of any such action or proceeding.

10.21 Attorneys' Fees and Costs. If any action in law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each Party shall pay its own attorneys' fees.

10.22 Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, then the Parties agree that such invalidity or unenforceability shall have no effect whatsoever on the balance of this Agreement.

10.23 Counterparts. This Agreement may be signed and delivered in any number of counterparts, each of which, when signed and delivered, shall be an original, but all of which shall together constitute one and the same Agreement.

10.24 Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement and any agreement or representation with respect to the same or the obligations of either Party with respect to the same which is not expressly provided in this Agreement or in a written document which is signed by the Party to be charged, shall be null and void.

10.25 Time is of the Essence. Time shall be of the essence as to all dates and times of performance contained in this Agreement.

10.26 Authority to Execute. Each Party represents and warrants to the other Party that all necessary action has been taken by such Party to authorize the undersigned to execute this Agreement and to bind it to the performance of its obligations hereunder.

10.27 Binding on Successors. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the Parties hereto, shall be binding upon and inure to the benefit of such Party, its successors and assigns.

10.28 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification obligations, shall survive any such expiration or termination.

10.29 Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than District and the Consultant.

IN WITNESS WHEREOF, the Parties have hereunto set their hands on the first day date above written.

“CONSULTANT”

Safework, Inc.

By:



Name: Domingo Camarano

Its: President

“DISTRICT”

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT

By:

Name: Timothy D. Holcomb

Its: Assistant Superintendent,
Chief Operating Officer

EXHIBIT LIST

EXHIBIT "A" SCOPE OF SERVICES

EXHIBIT "B" PROFORMA TASK ORDER

EXHIBIT "C" COMPENSATION

EXHIBIT "D" INSURANCE REQUIREMENTS

EXHIBIT "A"
SCOPE OF SERVICES

Upon full execution of a Task Order authorizing Consultant to proceed with construction managements services for a particular construction project within the District-Wide Construction Program (each, an "Assigned Project"), such Assigned Project shall be deemed to be included with the Services, the Project, and this Scope of Services, and Consultant shall thereafter furnish the District with the Services identified therein.

A. Phase I: Construction Phase. The "Construction Phase" of each Assigned Project will commence upon **the date identified in the Task Order** will end sixty (60) days after acceptance of each Assigned Project by the District; provided that, the Consultant shall continue to be subject to, and shall faithfully discharge, certain Construction Phase services of the Consultant, as set forth in this Agreement, which extend beyond the expiration of the said sixty (60) day period.

1. Construction Contracts/ Consultant Certification. The Consultant shall assist the District in preparing and executing contracts with successful bidders.

2. Submittal of Assigned Project Documentation. The Consultant shall provide and submit all appropriate Assigned Project Management documents, reports, etc., as required by applicable state laws, rules or regulations, including but not limited to, the California Department of Education, the State Allocation Board (SAB), Office of Public School Construction (OPSC) or any other regulatory entity with jurisdiction over each Assigned Project.

3. Attendance at Meetings. The Consultant shall attend internal and public meetings as required, including site meetings and District Board meetings as required and directed.

4. Facilitate Contract Administration. The Consultant, in cooperation with the Architect, shall provide administration of the contracts for construction as set forth below and as provided in the General Conditions of such contract(s) for construction.

a. Facilitate Work Coordination. The Consultant shall provide administrative, management and related services as required to coordinate work of the Contractors with each other and with the activities and responsibilities of the Consultant, the District, the SAB (and other State agencies with jurisdiction) and Architect, to complete each Assigned Project in accordance with the District and SAB (and other State agencies with jurisdiction) objectives for cost, time and quality. This requires the Consultant to provide sufficient organization, personnel and management to carry out the requirements of this Agreement.

b. Pre-Construction and Construction Conferences. The Consultant shall, in conjunction with District and Architect, schedule and conduct pre-construction

conferences, for the benefit of the contractors to orient the contractors to the various reporting procedures and site rules prior to commencement of actual construction. The Consultant shall also, in conjunction with District, Architect and other interested parties as requested by the District, conduct construction and progress meetings to discuss such matters as procedures, progress problems, and scheduling. The Consultant shall prepare and promptly distribute minutes of meetings to all parties in attendance, including Architect, District and District's Inspector, and shall prepare pre-meeting agendas if needed. The Consultant will prepare and distribute Assigned Project status reports as requested by the District and such other reports as may be required in connection with any State-funding.

c. Update Project Schedules. Consistent with the project schedule for each Assigned Project distributed to contractors, and utilizing construction schedules provided by each of the separate contractors, the Consultant shall update the project schedule for each Assigned Project incorporating the activities of the contractors on each Assigned Project, including activity sequence and duration, allocation of labor and materials, processing of shop drawings, product data and samples, and delivery of products requiring long lead time procurement. This update shall include the District's occupancy requirements, showing and scheduling portions of each Assigned Project having occupancy priority. The Consultant shall also update and reissue the project schedule for each Assigned Project as required to show current conditions and revisions required by actual experience. If requested by the District, the Consultant shall assist the contractor(s) in preparing a recovery schedule. Such recovery schedule will reflect the corrective action and extraordinary efforts to be undertaken by the contractor(s) to recapture lost time and will be distributed to the contractor(s), District, Architect and other appropriate parties.

5. Prosecution and Progress of each Assigned Project.

a. Contractor Performance. The Consultant shall require satisfactory performance from each of the contractors, and shall recommend courses of action to the District when requirements of a construction contract are not being fulfilled, and the non-performing party will not take satisfactory corrective action. The Consultant shall determine whether the work of each contractor is being performed in accordance with the requirements of their contract documents and shall endeavor to guard the District against defects and deficiencies in such work. The Consultant shall also make recommendations to the Architect and the District regarding special inspection or testing of work not in accordance with the provisions of the contract documents whether or not such work is then fabricated, installed or completed. The Consultant shall, further, inform the Architect, the District and District's Inspector of Record of work that the Consultant believes does not conform to the requirements and should be rejected by the Architect, the District or the District's Inspector of Record. The Consultant shall, in conjunction with the Architect and District's Inspector of Record, review any contractor's recommendations for corrective action on observed non-conforming work.

b. The Consultant shall not be responsible for the construction means, methods, techniques, sequences and procedures employed by the contractors in

performance of their individual contracts with the District. The Consultant shall be responsible, however, for any reports, advice or information provided to the District regarding each Assigned Project and the work of the Contractors, including any information regarding the compliance of their work with the contract documents.

c. With the Architect and the District's maintenance personnel, the Consultant shall document the contractors' check-out of utilities, operational systems and equipment for readiness, and shall assist in their initial start-up and testing.

6. Maintenance of Documents on Assigned Project Site. The Consultant shall keep (and provide the District, Architect, contractors and others with access to each Assigned Project) one record copy of all plans, drawings, specifications and other Contract Documents for each Assigned Project, including, without limitation, addenda, change orders, Titles 21 and 24 of the California Code of Regulations, the most recent edition of the California Building Code, and the prevailing wage rate tables, which are all part of the Contract Documents, on each Assigned Project site at all times during the progress of each Assigned Project. The Consultant shall maintain at each Assigned Project site, on a current basis, a copy of the following: (1) all Contract Documents and other contracts relating to each Assigned Project, including, without limitation, plans, drawings, specifications, addenda, change orders and other modifications thereto, in good order and marked by the trade contractors (and regularly checked by the Inspector) to record all changes made during construction; (2) shop drawings (3) product data; (4) submittals; (5) samples; (6) purchases; (7) materials; (8) equipment; (9) applicable handbooks, maintenance & operating manuals and instructions; (10) prevailing wage rates; (11) other related documents and revisions which arise out of the contracts or works. The Construction Manager shall also maintain records in duplicate of the following: (a) principal building layout lines; (b) elevations at the bottoms of footings; and (c) floor levels and key site elevations certified by each contractor's on-site subcontractors or personnel. The Consultant shall make all records available to the Architect for periodic visits to the site and to District personnel if requested. At the completion of each Assigned Project, the Consultant shall deliver all such records to the District and make those portions of such records available to the Contractors and Architect to facilitate the completion of as-built drawings.

7. Condition of Assigned Project Site.

a. Responsible for Maintenance of Assigned Project Site. The Consultant shall assume primary responsibility for maintaining and upkeep, and causing each contractor to maintain and keep, all areas of each Assigned Project site, outdoors and indoors, free from flying debris, grinding powder, sawdust, dirt and dust in general as well as any other product, product waste or work waste, that by becoming airborne may cause respiratory inconveniences to persons, particularly to students and the District's personnel. The Consultant shall also take, and cause all Contractors to take, specific care and action in accordance with all laws and regulations of governmental authorities with jurisdiction to avoid deposits of airborne dust or other elements that may accumulate on top of equipment, on walls, on floors, furniture and/or any other permanent movable items. If school is in session at an Assigned Project site,

and, in the District's reasonable discretion, flying debris, grinding powder, sawdust, dirt or dust from the work or from the Assigned Project disrupts or disturbs the students or faculty or the normal operation of the school, at District's request, the Consultant shall schedule the performance of all work around normal school hours or make other arrangements so that the work does not cause such disruption or disturbance. The Consultant's additional compensation for such work, if applicable, shall be negotiated and agreed to in writing by the parties.

b. Noise Reduction Devices. The Consultant shall assume primary responsibility for the installation, or for requiring the installation by all contractors, of noise reducing devices on construction equipment, and require that all contractors comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities (and monitor and enforce such compliance). If school is in session at any point during the progress of an Assigned Project, and, in the District's reasonable discretion, the noise from work performed in connection with such Assigned Project disrupts or disturbs the students or the faculty or the normal operation of the school, and at the District's request, the Consultant shall schedule the performance of all such work around normal school hours or make other arrangements so that the work does not cause such disruption or disturbance. The Consultant's additional compensation for such work, if applicable, shall be negotiated and agreed to in writing by the parties.

8. Storm Water Compliance. The Consultant shall review on behalf of the District, contractor's Storm Water Pollution Prevention Plans (SWPPP) and provide written recommendations to the District as to the adequacy of each SWPPP.

9. Contractor Safety Programs. The Consultant shall review the safety programs developed by each contractor for purposes of assisting in the coordination of safety programs with those of other contractors. The Consultant's responsibilities for assisting in the coordination of these multiple safety programs shall not extend to direct control over or charge of the acts or omissions of the contractors, subcontractors, agents or employees of the Contractors or subcontractors or any other persons performing portions of each Assigned Project not directly employed by the Consultant. The Consultant shall take all necessary precautions for the safety of its employees and comply with all applicable safety laws and building codes to prevent accidents or injuries to its employees. Any incident costs associated with responses to emergency situations, shall be included in this Agreement. No additional compensation will be provided for these costs.

10. Construction Costs. The Consultant shall be responsible for reviewing and reconciling each Contractor's schedule of values for the purpose of revising and refining the approved estimate of Construction Cost. Further, the Consultant shall incorporate approved changes as they occur, and develop cash flow reports and financial forecasts as needed by the District. The Consultant shall also:

a. Provide regular monitoring of the approved estimate of Construction Cost, showing actual costs for activities in progress and estimates for

uncompleted tasks. Identify variances between actual and budgeted or estimated costs, and advise the District and the Architect whenever Assigned Project costs exceed budgets or estimates.

b. Maintain cost accounting records on authorized work performed under unit pricing costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.

c. Develop and implement procedures for the review and processing of applications for payment by Contractors for progress and final payments. Make recommendations and provide advice to the Architect for certification to the District for payment.

11. Permits. The Consultant shall assist in obtaining building permits and special permits (if needed in the jurisdiction) for permanent improvements, excluding permits required to be obtained directly by the various contractors and verify that the District has paid applicable fees and assessments. Further, the Consultant shall assist in obtaining approvals from authorities having jurisdiction over each Assigned Project.

12. Procurement of Additional Consultants. If required by an Assigned Project, the Consultant shall assist the District in selecting and retaining the professional services of surveyors, special consultants, the District's Inspector of Record and materials testing laboratories and coordinate their services.

13. Interpretation of Contract Documents. The Consultant shall transmit to the Architect, in electronic format, Requests for Interpretations ("RFI") of the meaning and intent of the drawings and/or the specifications for each Assigned Project, and shall assist in the resolution of questions that may arise. The Consultant shall keep a log of all RFIs including tracking all dates (date submitted, date returned, etc.) and recording all responses to said RFIs. The Consultant shall provide all contractor RFIs and Consultant and/or Architect Responses to the District in a timely manner and shall maintain and keep a log of such documents.

14. Contractors' Insurance, Permits and Bonds. The Consultant shall also verify that all required permits and bonds have been obtained from all contractors, and forwarded to the appropriate District personnel. The Consultant shall develop and implement procedures for the ongoing review of required insurance coverages by contractors, including the review of additional insured endorsements, except in the event that the District utilizes an Owner Controlled Insurance Program ("OCIP"). If in the event the District utilizes an OCIP, the Consultant shall assist the District's OCIP Administrator to facilitate administration of the District's OCIP.

15. Processing of Change Orders and Other Approvals. The Consultant shall develop an administrative process regarding change orders and other approval and shall provide advice regarding such changes, implement change order procedures, review requests for changes, assist in negotiating Contractor's proposals, submit recommendations to the Architect and the District, and if they are accepted, prepare

and sign change orders for the Architect's and Contractor's signatures and District authorization. If requested by the District, the Consultant will analyze claims for extension of time, prepare estimates based upon alleged cause of claims, and will negotiate claims to the contract on behalf of the District and any other State agency with jurisdiction. The Consultant will also make recommendations to the District concerning settlement or other appropriate action. The Consultant will advise the District and make recommendations to the District for exercising the District's prerogatives, such as giving the contractor notice to accelerate the progress when the schedule goals are in jeopardy due to contractor failings, withholding payment for cause and other prerogatives when required in an effort to achieve contract compliance. The Consultant shall prepare and distribute change order reports on a monthly basis, or as required, throughout the Construction Phase. Such reports will provide information pertaining to proposed and executed change orders and their effect on the Construction Cost (as defined in Article 5 below) and Master Assigned Project Schedule.

a. Procedures for Change Orders. The Consultant will establish and implement procedures for submittals, change orders and other such procedures and maintain logs, files and other necessary documentation relating thereto. The Consultant shall receive from the contractors and shall review all shop drawings, product data, samples and other submittals and provide advice thereon and shall coordinate them with information contained in related documents and shall transmit them (together with the Consultant's comments thereto) to the Architect for review. The Consultant may, in the Consultant's discretion, refuse to process those submittals not prepared in accordance with the terms of the applicable contract documents, and shall return them to the Contractors for revision and resubmission at a later time.

b. Other Approvals. In collaboration with the Architect, the Consultant shall establish and implement procedures for expediting the processing and the approval of shop drawings, product data, samples and other submittals. The Consultant shall maintain logs, files and other necessary records and documentation for the District's behalf.

16. Labor Compliance Program. If applicable, the Consultant shall assist the District's Labor Compliance Consultant, as requested by the District, to aid in the administration and enforcement the District's Labor Compliance Program ("LCP").

17. Delivery and Storage of Materials. When bids and/or quotations are received for equipment, the Consultant shall assist the District in determining the lowest responsible/responsive bidder. The Consultant shall arrange for delivery and storage, protection and security for District-purchased materials, systems and equipment that are a part of each Assigned Project, until such items are incorporated into each Assigned Project. The Consultant shall also coordinate with the appropriate Contractor who is responsible for the installation of such materials, systems, and equipment. The Consultant shall also ensure that all requisitions for major equipment include a window period for delivery directly to each Assigned Project site. The Consultant shall receive at each Assigned Project site the delivery of all equipment and supplies. The Consultant shall inspect all deliveries for damages or errors, and shall coordinate with

all vendors/suppliers any necessary corrections of such damages or errors prior to signing for receipt of the equipment or supplies. The Consultant shall not accept any equipment or supplies that contain obvious damage, defects or errors. The District shall pay only for equipment and supplies which do not contain any damage, defects or errors, and which have been received, inspected and signed for by the Consultant. The Consultant shall be responsible and liable to the District for any equipment or supplies accepted in violation of this paragraph unless such condition was concealed and not subject to identification despite inspection. The Consultant shall not be held liable or in any way responsible for damage, theft and/or destruction not resulting from the negligence of the Consultant regarding such storage, protection and security.

18. Progress Payments. The Consultant shall develop and implement procedures for the review and processing of applications by contractors for progress and final payments based upon an approved schedule of values,

19. Progress Reports. The Consultant shall observe and record the progress of each Assigned Project. Further, the Consultant shall submit written progress reports to the District and to the Architect, including information on contractors and each contractor's work, as well as the entire Assigned Project, showing percentages of completion and the dollar number and amounts of change orders and their effect on the estimated Construction Cost. These progress reports must comply with any regulations of other public agencies having jurisdiction over each Assigned Project. The Consultant shall maintain a daily log containing a record of weather conditions, Contractors present at each Assigned Project site, work done on the site, numbers of workers by trade, work accomplished, deliveries made, problems encountered, visitors to the site, and other similar relevant data as the District may require. The Consultant shall ensure that the daily log is available for use and review by the District and the Architect and use reasonable diligence to discover work performed by Contractor(s) that is not in compliance with the Contract Documents.

20. Determining Completion/Partial Completion of the Work. The Consultant shall assist the Architect and the District in determining when each Assigned Project or a designated portion thereof is substantially complete. To this end, the Consultant shall prepare for the Architect a summary of the status of the work of each Contractor, listing changes in the previously issued certificates of substantial completion of the work and recommending the times within which Contractors shall complete uncompleted items. The Consultant shall also make recommendations to the District, the Architect and the District's Inspector of Record in instances when the Consultant observes work that, in his opinion, is defective, missing or not in conformance with the Contract Documents. The Consultant shall, further, assist the Architect and the District's Inspector of Record in conducting close-out inspections.

21. Coordination of Final Inspection of Work. Following the Architect's issuance of a certificate of substantial completion for each Assigned Project or designated portion thereof, the Consultant shall evaluate the completion of the work of the contractors and make recommendations to the Architect when work is ready for final inspection. The Consultant shall assist the Architect and District's Inspector of Record

in conducting final inspections. The Consultant shall also be responsible for the submission to Architect of contractors' as-built drawings in hard copy format and secure, review, approve and transmit to the District the required guarantees, affidavits, releases, bonds and waivers. The Consultant shall coordinate and schedule training sessions for District personnel and assure that each contractor's training obligations are satisfied.

B. Phase III: Post-Construction Phase

1. Contract Closeout. Immediately upon the District's and Architect's approval of completion of each Assigned Project, and in addition to any additional submittals required by this Agreement, the Consultant shall collect and submit the following close-out documentation to the District:

a. Operations and maintenance data for equipment as required by the Contract Documents for each Assigned Project (including, without limitation, complete sets of manuals containing manufacturers' instructions on the operation of each item and apparatus furnished under such Contract Documents);

b. Record drawings provided by the contractors for each Assigned Project showing, among other things, deviations from the original plans and drawings for each Assigned Project made during construction, details in the construction not previously shown on such plans or drawings, changes to existing conditions or existing conditions found to differ from those shown on the original plans and drawings, the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings and stub outs, and such other information as the District, Architect or Inspector may reasonably request from time to time;

c. Warranties and bonds for equipment put into service;

d. Keys;

e. Tools, spare parts and maintenance materials;

f. A list of all construction contractors, vendors and materialmen of every tier providing services, equipment and/or materials in connection with each Assigned Project, in a formal, adequately bound, catalogued form, which shall include the names, addresses, telephone numbers and fax numbers of such persons, and shall further include notices as to where pertinent persons can and may be reached for emergency service, inclusive of nights, weekends and holidays; and

g. All guaranties and warranties from all construction contractors as required by the Contract Documents for each Assigned Project.

2. Occupancy Permit. The Consultant shall assist the District in obtaining an occupancy permit, which may encompass accompanying government officials during inspections of each Assigned Project, assisting in preparing and submitting proper documentation to the appropriate agencies and assisting in final testing and other such

activities. At conclusion of each Assigned Project, the Consultant shall prepare final Assigned Project accounting and close-out reports as reasonably required by the District.

3. Assistance With Warranty Issues. The Consultant shall assist the District with warranty problem resolution and other claims against any contractor(s) for defective work or performance after completion of the construction.

4. Additional Duties. In addition to all Construction Phase services, obligations and responsibilities of the Consultant's services, obligations and responsibilities of the set forth above, the Consultant shall provide all construction management services for the Construction Phase which are required by applicable statelaws, rules or regulations, including but not limited to, the California Department of Education, the DSA, the SAB, OPSC or any other regulatory entity with jurisdiction over each Assigned Project.

5. Additional Services. The following "Additional Services" shall be performed by the Consultant upon authorization in writing from the District and shall be paid for in accordance with the fee schedule set forth in Exhibit "B," attached hereto and by this reference incorporated herein:

a. Services related to District-furnished furniture, furnishings and equipment that are not a part of each Assigned Project.

b. Consultation on replacement of work damaged by fire or other cause during construction and furnishing services in conjunction with the replacement of such work.

c. Services made necessary by the default of any contractor.

d. Preparing to serve, or serving, as an expert witness in connection with any public or other legal proceeding; provided, however, that preparing or serving as a fact witness for the District in any legal proceeding involving each Assigned Project or rendering testimony necessary to secure governmental approvals for each Assigned Project will not constitute an additional service hereunder.

e. Recruiting or training maintenance personnel.

f. Inspections of, and services related to, each Assigned Project after the end of the Construction Phase, not included in the scope of this Agreement; except that the Consultant shall assist the District, as a Basic Service hereunder, with all warranty claims during the warranty period and all claims relating to defective work or deficient performance by the contractors under the Contract Documents after completion of construction.

g. Providing any other services not otherwise included in this Agreement.

EXHIBIT "B"

TASK ORDER

**NEWPORT-MESA UNIFIED SCHOOL DISTRICT
MASTER PROFESSIONAL SERVICES AGREEMENT
TASK ORDER NO. 01**

This Task Order No. 01 ("Task Order") is entered into this 14 day of September 2021 by and between Newport-Mesa Unified School District ("District") and [Safework, Inc.] ("Consultant").

RECITALS

A. On or about September 2021 District and Consultant executed that certain Master Professional Services Agreement ("Agreement").

B. The Agreement provides that the parties would enter into a Task Order to make changes to or authorize certain work set forth in the Scope of Services (as defined in the Agreement). The purpose of this Task Order is to make changes to or authorize work on the terms and conditions set forth herein.

NOW, THEREFORE, the parties hereto hereby agree:

1. Section 1.1 of the Agreement and the Scope of Services referenced therein is hereby amended to include those services listed on Exhibit "1" attached hereto and by this reference incorporated herein, which Consultant shall perform pursuant to the schedule set forth on Exhibit "1."

2. Section 2.1 of the Agreement is hereby amended to increase the amount to be paid by District to Consultant as more particularly set forth on Exhibit "1."

3. Except as amended or supplemented herein or in previous Task Orders, the terms and conditions of the Agreement shall remain in full force and effect. Notwithstanding the immediately preceding sentence, the Agreement shall be interpreted in a manner consistent with the intent of this Task Order. In the event the services set forth in this task order are to be modified, such modification shall be implemented by written change order or amendment to this Task Order.

IN WITNESS WHEREOF, District and Consultant have caused this Task Order No. 01 to be executed as of the day and year first above written.

"CONSULTANT"

Safework, Inc.

"DISTRICT"

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT

By: 

By: _____

Name: Domingo Camarano

Its: President

Name: Timothy D. Holcomb

Its: Assistant Superintendent,
Chief Operating Officer

EXHIBIT "1"
TO
TASK ORDER NO. 01

A. Description of Services.

Construction Management Services for the Estancia High School Theater Project

B. Compensation (to be calculated using hourly rates provided in the Agreement and number of hours budgeted for performance of Services).

NTE: \$950, 000.00

C. Preliminary Project Schedule - TBD

EXHIBIT “C” COMPENSATION

Schedule of Rates

The hourly rates below are fully burdened with employee benefits, statutory requirements, overhead and profit. These rates are applicable to time and material services requested on an individualized hourly billing basis through 2021. Hourly rates are subject to adjustment based on an established cost index for subsequent years and District approval.

<u>Position</u>	<u>Hourly Rate</u>
Principal in Charge	\$180
Project Director	\$180
Sr. Project Manager	\$175
General Superintendent	\$175
Project Manager	\$170
Construction Manager	\$165
Superintendent	\$165
Safety Manager	\$165
QA/QC Manager	\$160
Scheduler	\$150
Estimator	\$150
Asst. Project Manager	\$140
Project Engineer	\$130
Office Engineer	\$125
Constructability Review Manager	\$165
Labor Compliance Specialist	\$145
Project BIM/CAD Administration	\$95
Project Controls Coordinator	\$90

Reimbursable Expenses

Reimbursable expenses are billed at actual cost plus 10% markup. All reimbursables are subject to District authorization and approval. All reimbursable expenses will be provided with supporting documentation of authorized expenditures.

EXHIBIT "D"

INSURANCE REQUIREMENTS

1. Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the Newport-Mesa Unified School District ("District") that it has secured all insurance required under this Section. Consultant shall require and verify that all subconsultants maintain insurance meeting all the requirements stated herein. Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to District that the subconsultant has secured all insurance required under this Section.
2. Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement, or as otherwise provided herein, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subconsultants. Consultant shall require all of its subconsultants to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:
 - (A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto) or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned); (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance; and (4) Professional Liability/Errors and Omissions Liability Insurance appropriate to their profession. The policies shall not contain any exclusion contrary to the Agreement, including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26); or (2) cross liability for claims or suits by one insured against another.
 - (B) Minimum Limits of Insurance. Consultant and all subconsultants shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence, \$2,000,000 aggregate for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1 million per accident for bodily injury and property damage; (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation in not less than statutory limits, Employer's Liability limits of \$1 million per accident for bodily injury or disease; and (4) *Professional Liability/Errors and Omissions*: an amount not less than \$2 million per occurrence or claim and in the aggregate. If this contract is for services that do not involve geotechnical engineering, surveying or the preparation of design or construction documents, the limit may be reduced to \$2 million per occurrence or claim and in the aggregate with written approval from District. All subconsultants shall have professional liability insurance with the same limits (Additional requirements for Professional Liability/Errors and Omissions Insurance written on a "claims made" basis

are set forth below.) District reserves the right to require a project-specific endorsement. Notwithstanding the minimum limits set forth above, any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds.

(C) Notices; Cancellation or Reduction of Coverage. At least fifteen (15) days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with District. If such coverage is cancelled or materially reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with District evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, District has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by District will be promptly reimbursed by Consultant or District may withhold amounts sufficient to pay premium from Consultant payments. In the alternative, District may suspend or terminate this Agreement.

3. Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by District to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37, or endorsements providing the exact same coverage, District, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Work or ongoing and completed operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects District, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of District before District's own primary insurance or self-insurance shall be called upon to protect it as a named insured. Any insurance or self-insurance maintained by District, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) District, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects District, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by District, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth above, any available insurance proceeds in excess of the specified

minimum limits of coverage shall be available to the parties required to be named as additional insureds.

(C) Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against District, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to include the following provisions:

(i) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days (10 days for nonpayment of premium) prior written notice by mail has been given to District.

(ii) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to District and any other additional insureds.

(iii) standard separation of insureds provisions.

(iv) no special limitations on the scope of protection afforded to District, its directors, officials, officers, employees, agents, and volunteers.

(v) waive any right of subrogation of the insurer against District, its officials, officers, employees, agents, and volunteers, or any other additional insureds, or shall specifically allow Consultant or others providing insurance in compliance with these specifications to waive their right of recovery prior to a loss. By signing this agreement, Consultant hereby waives its own right of recovery against District and any other additional insureds and shall require similar written express waivers and insurance clauses from each of its subconsultants.

4. Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by District. Consultant shall guarantee that, at the option of District, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects District, its directors, officials, officers, employees, agents, and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

5. Claims Made Policies. Claims made policies are not acceptable for any insurance other than Professional Liability insurance. In addition to the requirements above, for any claims made policy:

(A) The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

(B) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

(C) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

6. Subconsultant Insurance Requirements. Consultant shall not allow any subconsultants to commence work on any subcontract relating to the work under the Agreement until they have provided evidence satisfactory to District that the subconsultants have secured all insurance required under this Section. If requested by Consultant, District may approve different scopes or minimum limits of insurance for particular subconsultants. The Consultant and District shall be named as additional insureds on all subconsultants' policies of Commercial General Liability Insurance.
7. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to District.
8. Verification of Coverage. Consultant shall furnish District with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to District. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by District before work commences. District reserves the right to require complete, certified copies of all required insurance policies, at any time.
9. Reservation of Rights. District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

END OF EXHIBIT D - INSURANCE REQUIREMENTS