



# SERVICE AGREEMENT

This AGREEMENT is hereby entered into this 24th day of January in the year 20 22 in the County of Orange, State of California, by and between the Newport-Mesa Unified School District, hereinafter referred to as "DISTRICT" and GMU Pavement Engineering

23241 Arroyo Vista	(CONTRACTOR) Rancho Santa Margarita	CA	92688
(MAILING ADDRESS)	(CITY)	(STATE)	(ZIP CODE)

hereinafter referred to as "CONTRACTOR." DISTRICT and CONTRACTOR shall be collectively referred to as the "PARTIES." The PARTIES agree that this Agreement has been mutually drafted and authored by all the PARTIES and that it shall not be construed against any one Party. WHEREAS, DISTRICT is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if such persons are specially trained and experienced and competent to perform the special services required; and WHEREAS, DISTRICT is in need of such special services and advice; WHEREAS, CONTRACTOR is specially trained, experienced, and competent to perform the special services required by the DISTRICT, and such services are needed on a limited basis.

**Scope of Work** – CONTRACTOR shall perform the services as set forth in the Proposal, which is attached hereto as Exhibit A (hereinafter referred to as "CONTRACTED SERVICES"), and incorporated as if fully set forth herein. CONTRACTOR's specific scope of work shall be set forth in Exhibit A and/or supplemented by purchase orders subsequently issued by the DISTRICT, on an as needed basis.

**Fees and Expenses** – For the CONTRACTED SERVICES provided for hereunder, CONTRACTOR shall be compensated as set forth in Exhibit A. The total cost of service requested by the DISTRICT and provided by the CONTRACTOR under this agreement shall be specifically authorized by Purchase Order (PO) and is estimated to be no more than: \$ 12,551.00 in the aggregate under the term of this AGREEMENT.

**Term of Agreement** – CONTRACTOR shall commence providing service under this AGREEMENT beginning on 2/9/2022 and diligently perform as required and complete performance no later than 12/31/2022, or as per Exhibit A. Board approved for a total contract term not to exceed five (5) years, as allowed by Education Code § 17596.

**Additional Terms** – This AGREEMENT contains additional terms that are set forth in the attached documents titled General Conditions, Special Conditions, and Required Documents and Certifications, and associated Purchase Order(s), which by this reference are incorporated herein. DISTRICT and CONTRACTOR acknowledge, and agree to be bound by, the terms set forth in the selected documents attached to this AGREEMENT, as if such additional terms were fully set forth herein. This service agreement is valid following board approval and receipt of all required documents and certifications, including, but not limited to, proof of insurance and background clearance.

☒ General Conditions ☒ Special Conditions ☒ Required Documents and Certification ☒ Purchase Order(s)

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT as of the date written above.

## DISTRICT

Signature

Jonathan Geiszler

Typed Name

Director, Purchasing & Warehouse

Title

## CONTRACTOR

Signature

Gregory R. Silver, MSc, PE, CPE

Typed Name

President / CEO

Title

330359134

FEIN or Social Security Number

## DEFINITIONS

1. "Agreement" – means the document in its entirety, including all conditions, documents, and/or certifications incorporated by reference.
2. "District" – means the Newport-Mesa Unified School District, located at 2985 Bear St Costa Mesa, CA 92626.
3. "Contractor" – means the firm or individual as stated on page one (1) of the Agreement.

## GENERAL CONDITIONS

1. Expenses – DISTRICT shall not be liable to CONTRACTOR for any costs or expenses paid or incurred by CONTRACTOR in performing services for DISTRICT, except where noted in Section 7. All expenses shall be approved by the DISTRICT representative authorized to approve such costs prior to being invoiced. All expenses must meet the DISTRICT's requirements for reimbursement for expenses as detailed on DISTRICT's website.
2. Independent Contractor – CONTRACTOR, in the performance of this AGREEMENT, shall be, and act, as an independent contractor. CONTRACTOR understands and agrees that he/she and all of his/her employees shall not be considered officers, employees or agents of the DISTRICT, and are not entitled to benefits of any kind or nature normally provided employees of the DISTRICT and/or to which DISTRICT's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation Insurance. CONTRACTOR assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the services to be provided under this AGREEMENT. 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.
3. Materials – CONTRACTOR shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this AGREEMENT, except as follows:  
N/A

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CONTRACTOR's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession.
4. Business Termination – In the event that CONTRACTOR shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of DISTRICT this AGREEMENT shall terminate and be of no further force and effect and any property or rights tangible or intangible, shall forthwith be returned to DISTRICT.
5. Termination – DISTRICT may, at any time, for any reason, terminate this AGREEMENT and compensate CONTRACTOR only for services satisfactorily rendered to the date of termination.



Written notice by DISTRICT shall be sufficient to stop further performance of services by CONTRACTOR. Notice shall be deemed given when received by the CONTRACTOR or no later than three days after the day of mailing, whichever is sooner.

DISTRICT may terminate this AGREEMENT upon giving of written notice of intention to terminate for cause. Cause shall include: (a) material violation of this AGREEMENT by the CONTRACTOR; or (b) any act by CONTRACTOR exposing the DISTRICT to liability to others for personal injury or property damage; or CONTRACTOR is adjudged a bankrupt, CONTRACTOR makes a general assignment for the benefit of creditors or a receiver is appointed on account of CONTRACTOR's insolvency. Written notice by DISTRICT shall contain the reasons for such intention to terminate and unless within five (5) days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this AGREEMENT shall upon the expiration of the five (5) days cease and terminate. In the event of such termination, the DISTRICT may secure the required services from another contractor. If the cost to the DISTRICT exceeds the cost of providing the service pursuant to this AGREEMENT, the excess cost shall be charged to and collected from the CONTRACTOR. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to DISTRICT.

6. Duty to Provide Fit Workers – CONTRACTOR and subcontractors, if any, shall at all times enforce appropriate discipline and good order among their employees and shall not employ or work any unfit person or anyone not skilled in providing the services required under this AGREEMENT. It shall be the responsibility of the CONTRACTOR to ensure compliance with this section. Any person in the employ of the CONTRACTOR or subcontractor, whom DISTRICT may deem incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from providing services under this AGREEMENT and shall not again provide services except with written consent of DISTRICT.

The CONTRACTOR shall not permit an employee to come in contact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a violent or serious felony. The CONTRACTOR shall certify in writing to the governing board of the DISTRICT that none of its employees who may come in contact with pupils have been convicted of a violent or serious felony. The CONTRACTOR shall provide a list of the names of its employees who may come in contact with pupils to the governing board of the DISTRICT. Reference California Education Code Section 45125.1.

7. Hold Harmless – To the fullest extent permitted by law, Consultant shall defend (with counsel of District's choosing), indemnify and hold 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 acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants 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, District, its officials, officers, employees, agents, or volunteers. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (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. Consultant's obligation to fully defend and indemnify District, its Board, members of the Board, employees, and authorized volunteers shall extend to any and all liability incurred by District based on an allegation that Consultant has been misclassified as an independent contractor or failed to pay any or all necessary state or federal taxes.

8. Insurance – CONTRACTOR shall, at the CONTRACTOR'S sole cost and expense, take out prior to commencing the work, and maintain in force and effect, from the commencement of services until expiration of this AGREEMENT, and shall require all subcontractors, if any, whether primary or secondary, to take out and maintain a policy or policies of insurance covering CONTRACTOR'S and subcontractor's services and furnish to the DISTRICT a certificate of insurance evidencing all coverages and endorsements required hereunder. Said certificate of insurance shall be due upon execution of this AGREEMENT, or such subsequent date as agreed to by the DISTRICT. Such insurance shall be with an insurance company admitted by the Insurance Commissioner of



the State of California to transact such insurance in the State of California. Minimum coverages shall be as follows:

- a. General Liability Insurance for injuries including accidental death, to any one person in an amount not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.
- b. Subject to the same limit for each person on account of one accident, in an amount not less than \$1,000,000 per occurrence.
- c. Property Damage Insurance in an amount not less than \$1,000,000 per occurrence.
- d. Comprehensive Automobile Liability Insurance covering the use of all owned, non-owned and hired vehicles with combined bodily injury and property damage in an amount not less than \$1,000,000 per occurrence.
- e. Statutory Workers' Compensation Insurance in accordance with Sections 3700 and 3800 of the Labor Code of the State of California.
- f. An endorsement to said policy(s) naming DISTRICT and its officers, agents and employees as additional insured while rendering services under this AGREEMENT.
- g. A thirty (30) day written notice to DISTRICT of cancellation or reduction in coverage, ten (10) days' notice if cancellation is due to nonpayment of premium.
- h. CONTRACTOR hereby grants to the DISTRICT a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the DISTRICT by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.
- i. CONTRACTOR shall furnish the District with certificates and endorsements affecting coverage required by the AGREEMENT. The endorsements are to be signed by the person authorized by that Insurer to bind coverage on its behalf. All endorsements are to be received and approved by the DISTRICT before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements.

To the fullest extent permitted by law, The DISTRICT, its officers, officials, employees, and volunteers are to be covered as insureds as respects to any and all liability arising out of, or pertaining to, products of the CONTRACTOR; and with respect to liability arising out of automobiles owned, leased, hired, or borrowed by CONTRACTOR.

The CONTRACTOR's insurance coverage shall be primary insurance as respects to the District, it's officers, officials, employees, and volunteers. Any insurance or self-maintained by the DISTRICT, it's officers, officials, employees, or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

9. Attorney's Fees – If either party hereto becomes involved in litigation arising out of this AGREEMENT or the performance thereof, the court in such litigation, or in a separate suit, shall award reasonable costs and expenses, including attorney fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorney fees paid or incurred in good faith.
10. Assignment – The CONTRACTOR shall not assign, transfer, convey, sublet or otherwise dispose of this AGREEMENT or of its rights, title or interest in or to the same or any part thereof.
11. Other Contractors – DISTRICT reserves the right to enter into other agreements for work additional or related to the subject matter of this AGREEMENT and CONTRACTOR agrees to

cooperate fully with these other contractors and with the DISTRICT. When request by the DISTRICT, CONTRACTOR shall coordinate its performance under this AGREEMENT with such additional or related work. CONTRACTOR shall not interfere with the work performance of any other contractor or DISTRICT employee.

12. Nonperformance – As used in this AGREEMENT, “failure to perform” means failure, for whatever reason, to deliver goods and/or perform work as specified and scheduled in this AGREEMENT. If CONTRACTOR fails to perform under this AGREEMENT, then DISTRICT, after giving seven (7) days’ written notice and opportunity to cure to CONTRACTOR, has the right to complete the work itself, to obtain the contracted goods and/or services from other contractors, or a combination thereof, as necessary to complete the work. Both PARTIES agree that CONTRACTOR shall bear any reasonable cost difference, as measured against any unpaid balance due CONTRACTOR, for these substitute goods or services.
13. Remedies – In case of CONTRACTOR breach, and in addition to any other provision of this AGREEMENT, DISTRICT shall be entitled to any other available legal and equitable remedies. In case of DISTRICT breach, CONTRACTOR’s remedy shall be limited to termination of the AGREEMENT and receipt of AGREEMENT payments to which CONTRACTOR is entitled.
14. Errors – CONTRACTOR shall perform any and all additional work necessary to correct errors in the services performed under this AGREEMENT without undue delays or additional costs to the DISTRICT.
15. Security – DISTRICT hereby deems all information, documents, and property contained in or on DISTRICT property privileged and confidential. Any removal or disclosure of any privileged and confidential materials by employees or agents of CONTRACTOR or any subcontractor without express written consent of DISTRICT shall be considered a material breach of this AGREEMENT and shall be cause for immediate termination of this AGREEMENT. IF CONTRACTOR BECOMES AWARE OF A POSSIBLE UNAUTHORIZED REMOVAL OR DISCLOSURE OF PRIVILEGED AND CONFIDENTIAL MATERIALS, CONTRACTOR SHALL IMMEDIATELY NOTIFY DISTRICT.
16. Mandatory Reporter Requirements – CONTRACTOR acknowledges and understands that, pursuant to California Penal Code Section 11165.7, employees and agents of CONTRACTOR and any subcontractor whose duties under the Scope of Work include contact and supervision of children are mandatory reporters of known or suspected instances of child abuse or neglect. CONTRACTOR will ensure that employees or agents of CONTRACTOR and any subcontractor who are mandatory reporters will take the Child Abuse Mandated Reporter Educators Training Module within six weeks of hire and annually thereafter within the first six weeks of each school year. CONTRACTOR agrees to make this training available to each mandatory reporter. CONTRACTOR will ensure that each employee or agent of CONTRACTOR and any subcontractor who is a mandatory reporter will execute an Employee Acknowledgement Form and a Suspected Child Abuse Reporting Acknowledgement Form. CONTRACTOR will provide copies of each of these signed forms for each employee or agent of CONTRACTOR or any subcontractor who is a mandatory reporter to District within six weeks of the hire of the mandatory reporter and annually.
17. Unsupervised Contact: “Unsupervised contact” with students means contact that provides the person opportunity and probability for personal communication or touch with students when



not under direct DISTRICT supervision. As required by DISTRICT policy, CONTRACTOR shall ensure that CONTRACTOR, any subcontractors [of all tiers], and their officers, employees, and agents will have no direct, unsupervised contact with students while on DISTRICT property. CONTRACTOR will work with DISTRICT to ensure compliance with this requirement. If CONTRACTOR is unable to ensure through a security plan that none of its officers, employees, or agents, or those of its subcontractors, will have direct, unsupervised contact with students in a particular circumstance or circumstances, then CONTRACTOR shall notify DISTRICT before beginning any work that could result in such contact. In addition to any Live Screen Criminal Background Check Requirements as set forth above, CONTRACTOR authorizes DISTRICT, at its discretion, to obtain information about CONTRACTOR and its history and to independently conduct its own criminal background check, including fingerprinting, of any CONTRACTOR officers, employees, or agents who may have unsupervised contact with students. CONTRACTOR shall cause its employees and/or subcontractors, if any, to authorize DISTRICT to conduct these background checks. CONTRACTOR shall pay all fees for processing the background check. DISTRICT may deduct the cost of such fees from a progress or final payment to CONTRACTOR under this AGREEMENT, unless CONTRACTOR elects to pay such fees directly.

18. Compliance with Applicable Laws – The services completed herein must meet the approval of the DISTRICT and shall be subject to the DISTRICT’s general right of inspection to secure the satisfactory completion thereof. CONTRACTOR agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to CONTRACTOR, CONTRACTOR’s business, equipment and personnel engaged in operations covered by this AGREEMENT or accruing out of the performance of such operations.
19. Permits/Licenses – All business licenses, permits and/or fees required by the codes, ordinances and statutes of the State of California, the County of Orange, and the Cities of Costa Mesa or Newport Beach, as appropriate, must be taken out by the CONTRACTOR at CONTRACTOR’S sole cost and expense.
20. Employment with a Public Agency – CONTRACTOR, if an employee of another public agency, agrees that CONTRACTOR will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this AGREEMENT.
21. Conflict of Interest – CONTRACTOR affirms that to the best of his/her knowledge, there exists no actual or potential conflict between CONTRACTOR’s family, business, or financial interest and the services provided under this AGREEMENT in violation of any applicable state, local, or federal law, including, but not limited to, Government Code section 1090, and in the event of change in either private interests or services under this AGREEMENT, any question regarding possible conflict of interest which may arise as a result of such change will be raised with the DISTRICT. CONTRACTOR shall not be in a reporting relationship to a DISTRICT employee who is a near relative, nor shall a near relative be in a decision-making position with respect to the CONTRACTOR.
22. Affirmative Action Employment – In the performance of the terms of this AGREEMENT, CONTRACTOR agrees that it will not engage in, nor permit such subcontractor as it may employ to engage in, unlawful discrimination in employment of persons because of the race, religious

creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons.

23. Notice – All notices or demands to be given under this AGREEMENT by either party to the other, shall be in writing and given either by:

a. Personal service or;

b. U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served or if mailed on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section. At the date of this AGREEMENT, the addresses of the parties are as follows:

DISTRICT:

Newport-Mesa Unified School District  
2985 Bear Street  
Costa Mesa, CA 92626  
Attn: Purchasing Director

CONTRACTOR:

GMU Pavement Engineering  
23241 Arroyo Vista  
Rancho Santa Margarita, CA 92688

24. Tobacco/Vapor Use Policy – In the interest of public health, the DISTRICT is proud to provide a healthy, tobacco/vapor-free environment. Smoking or the use of any tobacco or vapor products are prohibited in buildings and vehicles, and on any property owned, leased or contracted for by the DISTRICT pursuant to DISTRICT'S Policy 3620. Failure by CONTRACTOR to abide with the conditions of Policy 3620 may result in the termination of this AGREEMENT.
25. Non-Waiver - The failure of the DISTRICT in any one or more instances to insist upon strict performance of any of the terms of this AGREEMENT or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.
26. Severability – If any term, condition or provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
27. Governing Law – The terms and conditions of this AGREEMENT shall be governed by the laws of the State of California with venue in Orange County, California.
28. Provisions of Law Clause – Each and every provision of law clause required by law to be inserted in the AGREEMENT shall be deemed to be inserted herein and the AGREEMENT shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party the AGREEMENT shall forthwith be physically amended to make such insertion or correction.
29. Force Majeure Clause – The PARTIES to this AGREEMENT shall be excused from performance thereunder during the time and to the extent that they are prevented from obtaining, delivering, or performing by act of God, fire, strike, loss, or shortage of transportation facilities,



lock-out, commandeering of materials, products, plants or facilities by the government, when satisfactory evidence thereof is presented to the other PARTY (IES), provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the party not performing.

30. Time is of the Essence – Time is of the essence in the performance of and compliance with each of the provisions and conditions of this contract.
31. Safety and Security – It shall be the responsibility of the CONTRACTOR to ascertain from the DISTRICT, the rules and regulations pertaining to safety, security and driving on school grounds, particularly when children are present. During outbreaks of communicable disease, such as the coronavirus pandemic, the CONTRACTOR is expected to follow all District safety and health precautions to prevent the spread of communicable disease. This includes frequent handwashing with soap and water, use of hand sanitizer when hand washing is not practicable, wearing a mask or face covering and appropriate level PPE, maintaining physical distancing of 6 feet from others, when practicable, and participating in district passive and active health screening.
32. Invoicing Required Documentation – If the below information is missing from an invoice under this AGREEMENT, the DISTRICT shall reject it and request an updated document with the appropriate date the document was re-delivered to the DISTRICT:
  - a. Name of firm and address or person and address submitting invoice.
  - b. Name of school district as addressee (not school).
  - c. Date of invoice. Note: Payment Terms: net 30 days, unless cash discount provided
  - d. Number of school district purchase order (if applicable).
  - e. Special terms, such as discounts.
  - f. Description of each item, not just a stock number.
  - g. Quantity.
  - h. Unit quantity (dozen, gross, pound, etc.)
  - i. Unit price for each item.
  - j. Extended price for each item.
  - k. Hours and rates for labor charges, if applicable
  - l. Subtotals of amounts subject to sales tax.
  - m. Amount of sales tax (if applicable), or total fixed fee, if applicable.
  - n. Phased billing may apply if fixed fee.
33. Nondiscrimination – CONTRACTOR agrees that it will not engage in unlawful discrimination in employment of persons because of race, color, religious creed, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age of such persons.
34. Entire Agreement/Amendment – This AGREEMENT and any exhibits attached hereto constitute the entire agreement among the PARTIES to it and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated, and may be amended only by a written amendment executed by both Parties to the AGREEMENT.
35. Authority – The undersigned warrant that they are duly authorized representatives of the PARTIES and have been empowered to execute this AGREEMENT on behalf of the PARTY indicated.
36. Order of Precedence – The documents listed below are hereby incorporated by reference. In the event of an inconsistency or conflict between or among the provisions of this AGREEMENT, the inconsistency shall be resolved by giving precedence in the following order:
  - a. Special Conditions
  - b. General Conditions
  - c. Purchase Order(s)

In the event of any conflict, discrepancy, error or omission among any parts of the AGREEMENT, either PARTY shall immediately notify the other PARTY and both PARTIES shall decide how to remedy such conflict, discrepancy, error or omission. If the PARTIES cannot resolve any such conflict, discrepancy, error or omission by mutual agreement, the AGREEMENT may be immediately terminated. The AGREEMENT Terms and Conditions shall prevail if there is a conflict between the terms and conditions of the contractor's packaging, invoices, catalogs, brochures, technical data sheets or other documents.

CONTRACTOR certifies under penalty of perjury that CONTRACTOR is a (check applicable):

- ☐ Individual / Sole Proprietor or single-member LLC    ☐ C Corporation    ☒ S Corporation  
☐ Partnership    ☐ Other \_\_\_\_\_  
☐ LLC. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) \_\_\_\_\_



### **SPECIAL CONDITIONS**

These conditions are applicable based on the responses in Exhibit B, or where applicable based on the services rendered to the DISTRICT. It is the CONTRACTOR's sole and absolute responsibility to report any ambiguities, inconsistencies, or errors to the DISTRICT.

1. Criminal records check – Exhibit B shall be completed by the CONTRACTOR. If CONTRACTOR shall engage district pupils, Exhibit C will be completed and returned to the DISTRICT.
  - a. Criminal Background Check Requirements – CONTRACTOR, at its sole cost and expense, and as necessary to satisfy the requirements of Education Code (EC) section 45125.1 and 45125.2 or DISTRICT policy, will conduct all required criminal background checks. If required by EC section 45125.1, CONTRACTOR must provide for the completion of Exhibit C Criminal Records Check Certification, in the DISTRICT's required format, prior to any of the CONTRACTOR's employees, or those of any other subcontractors, who are anticipated to come into contact with the DISTRICT's students. CONTRACTOR further acknowledges that other fingerprinting requirements may apply, as set forth in Education Code section 45125 et seq., and CONTRACTOR will comply with any such requirements. CONTRACTOR further acknowledges and agrees that no CONTRACTOR or subcontractor employees, agents or representatives shall come into contact with students if they have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).] Notwithstanding anything to the contrary herein, if CONTRACTOR is an individual operating as a sole proprietor, is required by Education Code section 45125.1(k), it shall be the responsibility of the DISTRICT to prepare and submit that individual's fingerprints to the Department of Justice.
2. BMX Acknowledgement – If CONTRACTOR is performing a BMX and/or skateboard event on DISTRICT property, Exhibit D shall be completed and returned to the DISTRICT.
3. Insurance –
  - a. Special Hazards Insurance, where appropriate, with special rider to include automotive and truck, where operated, and material hoist, where used, in an amount not less than \$1,000,000 per occurrence. Yes ☐ No ☒
  - b. Sexual Abuse or Molestation Insurance in an amount not less than \$1,000,000 per wrongful act and \$2,000,000 aggregate. Yes ☐ No ☒

- c. Fire Insurance on all work subject to loss or damage by fire. Amount of fire insurance shall be sufficient to protect against loss or damage in full until work is accepted by the DISTRICT. Yes ☐ No ☒
- d. Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by CONTRACTOR in this AGREEMENT and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. DISTRICT, its board of trustees, employees, agents, and volunteers must be named as additional insureds with respect to liability arising out of work or operations performed by or on behalf of CONTRACTOR under this AGREEMENT. Yes ☐ No ☒
- e. Professional Liability (Errors and Omissions; E&O) Insurance: Professional Liability (Errors and Omissions) Insurance appropriate to Contractor's profession, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by CONTRACTOR in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. DISTRICT, its board of trustees, employees, agents, and volunteers must be named as additional insureds with respect to liability arising out of work or operations performed by or on behalf of CONTRACTOR under this AGREEMENT. Yes ☒ No ☐

4. Originality of Services – CONTRACTOR agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays, and video



productions prepared for, and submitted to, the DISTRICT and/or used in connection with this AGREEMENT, shall be wholly original to CONTRACTOR and shall not be copied in whole or in part from any other source, except that submitted to CONTRACTOR by DISTRICT as a basis for such services.

5. Copyright/Trademark/Patent – CONTRACTOR understands and agrees that all materials produced under this AGREEMENT shall become the property of DISTRICT and cannot be used without DISTRICT's express written permission. DISTRICT shall have all right, 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 the DISTRICT.
  - a. Originality of Services
  - b. Copyright/Trademark/Patent
6. Prevailing Wage Requirements – CONTRACTOR acknowledges and agrees that, if applicable, CONTRACTOR shall be responsible for payment of prevailing wage rates in accordance with Labor Code sections 1720 et seq. and 1770 et seq. to all personnel performing SERVICES under this AGREEMENT. CONTRACTOR shall obtain a copy of the prevailing rates of per diem wages applicable to the work to be performed under this AGREEMENT from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at [www.dir.ca.gov/dlsr/](http://www.dir.ca.gov/dlsr/). In the alternative, the DISTRICT shall provide CONTRACTOR with a copy of the prevailing rates of per diem wages. If the DISTRICT is using State funds for the project and is required to enforce a Labor Compliance Program ("LCP"), then Contractor will be required to enforce the District's Labor Compliance Program ("LCP"), as applicable. If applicable, Certified Payroll records shall be maintained by the CONTRACTOR and copies of the certified payroll shall be electronically sent to the Department of Industrial Relations and be delivered to the DISTRICT at the end of each month during the entire duration of the AGREEMENT. If the AGREEMENT is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Subject to exceptions as set forth in Labor Code section 1771.1, CONTRACTOR or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any AGREEMENT for public work, as defined by statute, unless it is currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. DISTRICT may not accept a bid nor any contract or subcontract entered into without proof of the CONTRACTOR or subcontractor's

current registration to perform public work pursuant to Section 1725.5. For more information, go to <http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>

7. Subcontractors – CONTRACTOR shall not delegate, by contract, agreement or otherwise, any services or tasks required under this AGREEMENT to any other person or entity without the express written permission of DISTRICT by executed addendum. Consent to any subcontract may be withheld by DISTRICT at its sole and unrestricted discretion. DISTRICT shall not be obligated to pay for any services or work performed by an unauthorized person or entity. CONTRACTOR shall at all times during the term of this agreement remain fully and independently responsible and liable to DISTRICT for the full and complete performance of the terms and conditions of this AGREEMENT. CONTRACTOR shall be responsible for ensuring that all subcontractors independently satisfy all of the requirements of CONTRACTOR under this AGREEMENT, including but not limited to the insurance and indemnification provisions of this AGREEMENT, unless otherwise agreed in writing by the DISTRICT's Risk Manager or designee. Prior to performance of Services by any subcontractor, the subcontractor shall provide DISTRICT with evidence of all insurance, certificates, forms, and licenses required by this AGREEMENT.



## **Exhibit A**

### **Scope of Work / Fees and Expenses / Term of Agreement**

#### Scope of Work

Will provide pavement engineering services for playground pavement replacement at Mariners Elementary per the attached proposal.

#### Fees and Expenses

NTE \$12,551.00

#### Term of Agreement

2/9/2022 - 12/31/2022

**Exhibit B**

**Child Engagement Certification**

To the Governing Board of Newport-Mesa Unified School District:

I/We, GMU Pavement Engineering certify that:

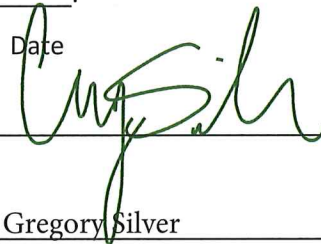
Name of Contractor

CONTRACTOR's employees, agents, or officers shall NOT engage in any UNSUPERVISED CONTACT with any child of the DISTRICT without DISTRICT staff present.

I/We declare under penalty of perjury that the foregoing is true and accurate.

Executed at \_\_\_\_\_, California on \_\_\_\_\_.

Date



Signature

Gregory Silver

Typed or printed name

President / CEO

Title

23241 Arroyo Vista, RSM, CA 92688

Address

DISTRICT Administrator certifies the above to be true and accurate:

Signature

Typed or printed name

Date

Exhibit C

**CRIMINAL RECORDS CHECK CERTIFICATION**

**AB 1610, 1612 and 2102**

To the Governing Board of Newport-Mesa Unified School District:

I/We, GMU Pavement Engineering certify that:

Name of Contractor

1. I/We have carefully read and understand the Notice to Contractors Regarding Criminal Record Checks (Education Code Section 45125.1) required by the passage of AB 1610, 1612 and 2102.
2. Due to the nature of the work I will be performing for the District, my employees may have contact with students of the District.
3. None of the employees who will be performing the work have been convicted of a violent or serious felony as defined in the Notice and in Penal Code Section 1192.7 and this determination was made by a fingerprint check through the Department of Justice.

I/We declare under penalty of perjury that the foregoing is true and correct.

Executed at \_\_\_\_\_, California on \_\_\_\_\_.

Date

  
\_\_\_\_\_

Signature

Gregory Silver

Typed or printed name

President / CEO

Title

23241 Arroyo Vista, RSM, CA 92688

Address

(949) 888-6513

Telephone



## **NOTICE REGARDING CRIMINAL RECORDS CHECK**

### **(EDUCATION CODE SECTION 45125.1)**

Education Code Section 45125.1 provides that if the employees of any entity that has a contract with a school district may have any contact with pupils, those employees shall submit or have submitted their fingerprints in a manner authorized by the Department of Justice together with a fee determined by the Department of Justice to be sufficient to reimburse the Department for its costs incurred in processing the application.

The Department of Justice shall ascertain whether the individual whose fingerprints were submitted to it has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the Department. When the Department of Justice ascertains that an individual whose fingerprints were submitted to it has a pending criminal proceeding for a violent felony listed in Penal Code Section 1192.7(c), or has been convicted of such a felony, the Department shall notify the employer designated by the individual of the criminal information pertaining to the individual. The notification shall be delivered by telephone and shall be confirmed in writing and delivered to the employer by first-class mail.

The contractor shall not permit an employee to come in contact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a violent or serious felony. The contractor shall certify in writing to the governing board of the school district that none of its employees who may come in contact with pupils have been convicted of a violent or serious felony.

Penal Code Section 667.5(c) lists the following "violent" felonies: murder; voluntary manslaughter; mayhem; rape; sodomy by force; oral copulation by force; lewd acts on a child under the age of 14 years; any felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant inflicts great bodily injury on another; any robbery perpetrated in an inhabited dwelling; arson; penetration of a person's genital or anal openings by foreign or unknown objects against the victim's will; attempted murder; explosion or attempt to explode or ignite a destructive device or explosive with the intent to commit murder; kidnapping; continuous sexual abuse of a child; and carjacking.

Penal Code Section 1192.7 lists the following "serious" felonies: murder; voluntary manslaughter; mayhem; rape; sodomy by force; oral copulation by force; a lewd or lascivious act on a child under the age of 14 years; any felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant personally inflicts great bodily injury on another, or in which the defendant personally uses a firearm; attempted murder; assault with intent to commit rape or robbery; assault with a deadly weapon on a peace officer; assault by a life prisoner on a non-inmate; assault with a deadly weapon by an inmate; arson; exploding a destructive device with intent to injure or to murder, or explosion causing great bodily injury or mayhem; burglary of an inhabited dwelling; robbery or bank robbery; kidnapping; holding of a hostage by a person confined in a state prison; attempt to commit a felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant personally uses a dangerous or deadly weapon; selling or furnishing specified controlled substances to a minor; penetration of genital or anal openings by foreign objects against the victim's will; grand theft involving a firearm; carjacking; and a conspiracy to commit specified controlled substances offenses.

## Exhibit E



GMU Pavement Engineering

(Outside Organization Name)

### Outside Organization COVID-19 Vaccination Attestation Form

On August 11, 2021, the California Department of Public Health (CDPH) issued an order requiring all public and private schools serving TK through 12<sup>th</sup> grades to verify the vaccination status of all staff and volunteers, and require those who are unvaccinated to undergo at least weekly diagnostic screening testing. The details of the CDPH Order can be found here:

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Vaccine-Verification-for-Workers-in-Schools.aspx>

To comply with the Order, and to ensure the Newport-Mesa Unified School District (NMUSD) schools remain open while maintaining the safest possible environment for our students and staff, NMUSD has adopted the requirement for all District "Workers," which is defined for this policy to include all NMUSD certificated and classified employees, contractors, volunteers, and any other paid and unpaid adult serving in the District or who are working on-site at a school campus supporting school functions.

Effective October 18, 2021, outside organization "Workers" will only be allowed on school campuses if the outside organization has completed this Vaccination Attestation Form attesting that the "Workers" have been fully vaccinated or that unvaccinated or incompletely vaccinated "Workers" are included in a weekly screening/testing program.

Please note that you are required to provide accurate information in your response to the questions below. For purposes of this attestation, "Workers" are considered "fully vaccinated" two weeks or more after they received the second dose in a 2-dose series (Pfizer-BioNTech or Moderna or vaccine authorized by the World Health Organization), or two weeks or more after they have received a single-dose vaccine (Johnson and Johnson [J&J]/Janssen).

Please select the statement below that accurately describes the vaccination status of the "Workers" you are providing on-site at NMUSD school campuses:

<input checked="" type="checkbox"/>	All are fully vaccinated
<input type="checkbox"/>	All are not fully vaccinated and a COVID-19 screening/testing program is in place that provides screening/testing of all unvaccinated or incompletely vaccinated "Workers" that provides testing at least once weekly with either PCR testing or antigen testing. Any PCR (molecular) or antigen test used must either have Emergency Use Authorization by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services.
<input checked="" type="checkbox"/>	No employees will be in the presence of students.
<input type="checkbox"/>	Services provided on-site during school hours will not be in the presence of students.
<input type="checkbox"/>	Services provided on-site occur during non-student hours.
<input type="checkbox"/>	Services are not provided on-site.

I understand that I am required to provide accurate information in response to the questions above. I hereby attest that I have accurately and truthfully answered the questions above.

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

Date: January 28, 2022

10-1-2021

### REQUIRED DOCUMENTS AND CERTIFICATIONS

- ☒ 1. W-9
- ☒ 2. Insurance (Refer to § 8 of General Conditions)
  - ✓ a. Worker's Compensation and Employers Liability Insurance
- ☒ 3. Exhibit B – Child Engagement Certification
- ☒ 4. Exhibit C – Criminal Records Check
- ☐ 5. Exhibit D – BMX / Skateboard Acknowledgement
- ☒ 6. Exhibit E - Vaccine and Testing Attestation
- ☐ 7. Live Scan (DOJ and FBI Clearance – FOR SOLE PROPRIETORS ONLY)
- ☐ 8. Professional License (SPED)
- ☐ 9. Resume (SPED)
- ☐ 10. TB Test





January 14, 2022

Mr. Lance Bidnick  
Newport Mesa Unified School District  
2985 Bear Street  
Costa Mesa, CA 92626

GMU Proposal P-22006

**Subject:** Proposal and Budget Estimate to Provide Pavement Engineering Services, Mariners Elementary School, Newport Beach, California.

**References:** (1) Limited Pavement Investigation, Proposed Elementary School Improvements Newport-Mesa Unified School District, Newport Beach and Costa Mesa, CA, prepared by Southern California Geotechnical, dated May 13, 2020.

(2) Alternative Pavement Design Recommendations, Proposed Elementary School Improvements Newport-Mesa Unified School District, Newport Beach and Costa Mesa, CA. prepared by Southern California Geotechnical, dated May 19, 2020.

(3) Parking Lot Paving Replacement at 5 District Elementary Schools. prepared by Blue Peak Engineering, dated May 18, 2020.

Dear Mr. Bidnick,

GMU is pleased to submit this proposal and budget estimate to provide pavement engineering services for the Mariners Elementary School, located in 2100 Mariners Drive, Newport Beach, California.

Our understanding of this project is based on our discussions with you, our field visits to this site for our on-going pavement assessment and management study, and our review to the attached three references. Our scope of work for this project will only address the paved playground area located at the subject address and not the recently repaved western or southern areas of the school property.

The general playground pavement condition ranges between "fair" and "poor" depending on the location. The existing surface generally contains significant aging-related distresses (longitudinal cracking, transverse cracking), and some load-related distresses (alligator cracking, depressions).

## **BACKGROUND AND QUALIFICATIONS**

GMU specializes in providing the scope of work outlined in this proposal, as well as the following subdisciplines of civil engineering services in-house. Compared to other firms who often subcontract to outside firms for certain components of the project, we provide our services in a more efficient and proactive manner by providing these notable services all in-house:

- Pavement (network-level to project-level to assessment)
- Geotechnical Engineering
- Geo-Structural Engineering for Retaining Wall Designs & Construction
- Preparation of Bid Documents (plans and specifications) and Bid Solicitation
- Construction Management Advisory Services
- Construction Observation & Testing Services

GMU is currently providing similar services to other schools, business park owners/managers, and homeowner associations located throughout Orange County, California. Some notable and recent on-going examples include:

- St. Margaret's Episcopal School (2019 to current)
- More than 30 Irvine Company Office Property parking lot sites (2018 to current)
- Emerald Bay Homeowners Association in Laguna Beach (2018 to current)
- Casta Del Sol Homeowners Association in Mission Viejo (2018 to current)
- Ocean Ranch Homeowners Association in Laguna Niguel (2012 to current)
- Lake Forest II Master Homeowners Association in Lake Forest (2018 to current)
- Orchard Hills Homeowners Association in Irvine (2019 to current)
- Ocean Heights Homeowners Association in Laguna Niguel (2018 to current)
- Dove Canyon Homeowners Association in Rancho Santa Margarita (2020 to current)
- Rancho San Juan Homeowners Association in San Juan Capistrano (2020 to current)

In addition to homeowner projects, GMU provides pavement engineering services for the City of Newport Beach and numerous other agencies in southern California.

## **SCOPE OF WORK**

We propose to perform the following scope of work for the subject project:

- Phase 1 – Pavement Evaluation and Repair Recommendations
- Phase 2 – Construction Management Advisory and Construction Materials Testing Services

The following sections describe our proposed phasing of work in additional detail.



## PHASE 1 – PAVEMENT EVALUATION & DESIGN / REPAIR RECOMMENDATIONS

### Phase 1.1 – Document Review, Pavement Surface Condition Assessment, & Dig Alert

GMU will perform a document review of existing as-built drawings and past geotechnical/pavement reports provided to us. The information gathered from this review will be considered in the analysis (i.e., existing pavement section thicknesses, date of last pavement improvement work, etc.).

To document the condition of the existing pavement, GMU will perform a pavement surface condition assessment to identify the type, extent, and severity levels of the pavement distresses in general accordance with ASTM D 6433.

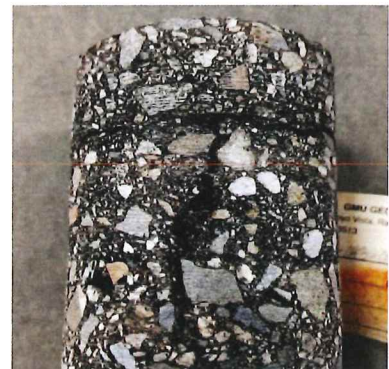
Pavement coring locations will be marked and Dig Alert (Underground Service Alert) will be notified to assess potential conflict with known underground utilities prior to performing pavement corings.

### Phase 1.2 – Pavement Corings and Subsurface Exploration

Pavement coring locations will be selected throughout the school site based on information gathered from the pavement surface condition assessment. In addition to identifying existing pavement thicknesses and layers within the asphalt, cores also reveal the depth and orientation of the crack (top-down cracking or bottom-up cracking). Understanding the penetration and orientation of the cracks through the section can influence the pavement repair recommendations, such as the depth of the mill, the thickness design of the overlay, if a pavement fabric interlayer is required, or if full pavement section replacement is required. An assessment of the existing pavement section and subgrade conditions throughout the community also reduces the likelihood of change orders during construction due to differing conditions than anticipated.

Coring will be performed using an electric-powered drill motor. Small diameter cores will be drilled. Sampling and logging of the cores will be performed by a GMU Field Engineer. Petromat, if observed, will be documented and its depth measured. The condition of the AC section will also be reviewed and recorded. Bag samples of the soil subgrade will be collected for laboratory testing. Upon completion of the logging and sampling, the core holes will be immediately backfilled with a permanent asphalt patch.

Our budget includes **one (1) day** of pavement corings and we anticipate approximately **7 to 9 pavement corings** will be performed.



**Photo 1: AC core revealing in-place Petromat and effect on reflective cracking.**



### **Phase 1.3 – Laboratory Testing**

We will perform laboratory testing of the samples collected from the pavement coring in our in-house Caltrans certified pavement materials laboratory. Testing may include the following:

- In-place moisture content
- Maximum density and optimum moisture content
- Laboratory soil classification (Atterberg Limits and Percent Passing No. 200 Sieve)
- R-value testing
- Sulfate content (for compatibility of soil with potential cement-treatment)

The exact type and quantity of tests will be dependent on the conditions encountered. This information will be utilized in our engineering analysis to determine the adequacy of the existing pavement sections and subgrade conditions. The results of the laboratory tests are analyzed to develop appropriate pavement repair recommendations.

### **Phase 1.4 – Pavement Engineering Analysis**

Based on the information gathered from the previous tasks, pavement engineering analysis will be performed to develop cost-effective and viable pavement repair recommendations. Pavement engineering analysis will be performed in accordance with the Caltrans Highway Design Manual to develop pavement thickness design recommendations. The subgrade soil condition, in-place structural section, traffic conditions, depth of cracking, construction costs of different repair methods, and more will be considered when developing the pavement repair recommendations.

### **Phase 1.5 – Pavement Evaluation and Design Report**

Our work as described in Phase 1.1 through 1.4 will be summarized in a report, which will include the following sections:

- Summary of relevant information gathered from the document review;
- Subsurface exploration location map;
- Pavement coring information summary table (asphalt concrete thickness, aggregate base thickness, subgrade soil type, etc.);
- Select photographs of the pavement surface condition;
- Laboratory testing results; and
- Pavement design/rehabilitation repair recommendations, including pavement layer thicknesses.

GMU possesses extensive experience in developing cost-effective pavement repair alternatives, including the following:

- Localized AC repairs (patches) followed by mill-and-overlay repair using conventional AC or rubberized AC pavement;
- Cold in-place (CIR) or cold central plant recycled (CCPR) asphalt concrete (AC) pavement;
- Cement stabilized pulverized base (CSPB) as part of the pavement structural section;
- Cement- or lime-stabilized soils (CSS or LSB) for subgrade stabilization and/or as part of the pavement structural section;
- Fiber-reinforced asphalt concrete (FRAC) to improve reflective cracking resistance and/or reduce required AC thickness;
- Rubberized hot-mix asphalt (RHMA or ARHM overlays);
- Geogrid/geotextiles to reduce required aggregate base thickness or to stabilize subgrade conditions; and more.

The procedures described in Phase 1.1 through 1.5 and our experience in design and construction of these strategies allows us to recommend cost-effective alternative pavement repair strategies.

## **PHASE 2 – CONSTRUCTION MATERIALS TESTING AND CONSTRUCTION MANAGEMENT ADVISORY SERVICES**

During construction, GMU will oversee the construction of the pavement improvement project as construction management advisors. The objective of performing construction oversight is to verify that the contractor performs the work in accordance with the applicable code, plan, and specification requirements.

Inspection items generally include verifying thicknesses, AC mix temperatures, AC compaction, soil preparation procedures, tack coat application coverage, installation of pavement interlayer system, and more. Additionally, the materials used on the project will be sampled and laboratory tests will be performed to verify compliance with the project specifications. Laboratory tests to be performed may include:

- Asphalt concrete binder content;
- Asphalt concrete Hveem Stability;
- Asphalt concrete maximum density; and
- Gradation.

Please note, the cost for this task is primarily dependent on the type and extent of the repairs and the contractor's work schedule. A budget estimate can be provided for this phase of work when more information becomes available.





Photo 2: GMU performed construction management advisory and testing services, including compaction testing, at Irvine Company Office Property’s Sand Canyon Business Park.

**ESTIMATED FEE**

We will provide the above outline scope of work on a lump-sum by percent-completion basis. Should additional services be requested beyond the specified scope, they would be performed on a time-and-materials basis per the attached 2021 GMU Standard Schedule of Charges.

*Newport Mesa Unified School District  
Mariners Elementary School,  
Newport Beach, California*

Phase 1 – Pavement Evaluation and Design/Repair Recommendations .....	\$	12,551
Phase 2 – Construction Support.....	\$	TBD*

*\*The budget for Phase 2 is dependent on the findings from Phase 1, as well as the contractor’s schedule. Our field inspection services are performed directly in conjunction with the contractor’s work schedule. A budget estimate can be provided when the repair scope is finalized and the contractor’s schedule is available.*

Please notify us if the proposed scope of services does not meet your current needs, or if any significant changes are made to the proposed development so that we can revise our scope of services. Revision of the scope of services may affect the estimated fee. The proposed scope of services is consistent with the level of care and skill ordinarily exercised by engineering professionals with experience in this area. No warranty, either expressed or implied, is made.



Mr. Lance Bidnick, NEWPORT MESA UNIFIED SCHOOL DISTRICT  
Pavement Engineering Services, Mariners Elementary School, Newport Beach, CA

**CLOSURE**

GMU is pleased to have this opportunity to propose our services for your project. Should you have any questions or comments, please feel free to call the undersigned (949-888-6513).

Respectfully submitted,5  
**GMU PAVEMENT ENGINEERING**



  
Ali Zalgout, M.Sc.  
Pavement Engineer

  
Michel El Sebaaly, MSc, EIT  
Senior Staff Pavement Engineer

  
Roger Schlierkamp, M.Sc., PE  
Director of Pavement Engineering

Attachments:

GMU 2021 Schedule of Charges  
GMU General Conditions for Geotechnical Engineering Services

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I accept the scope and budget estimate set forth in this proposal, and the conditions set forth in the attached Agreement:

*(Please sign below and initial each page of the General Conditions on bottom right)*

Signature of Client or Authorized Agent:

\_\_\_\_\_

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

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MES/AZ/P-22006 1/14/22

### ASSUMPTIONS

Sand blasting to remove Dig Alert markings or patching core holes with hot-mix AC is not included in our scope or considered in our cost estimate.

This proposal specifically excludes the assessment of environmental characteristics, particularly those involving hazardous substances at the site. In the event that obviously suspicious subsurface materials are encountered visually or by odor in the geotechnical test borings, such drilling will be immediately terminated until we receive direction from you. GMU will notify you as soon as possible of such an occurrence, and we will both mutually decide whether to continue, modify, or cease the remainder of the drilling program and whether an environmental assessment should be conducted. All added costs incurred because of suspected hazardous substances will be charged on a time-and-expense basis over and above the established fees for the site investigation.



## 2021 SCHEDULE OF CHARGES

### PROFESSIONAL SERVICES

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Document Preparation and Project Services	\$ 97.00/hour
CAD/GIS Design Engineer	\$ 118.00/hour
Staff Engineer or Geologist	\$ 152.00/hour
Senior Staff Engineer or Geologist	\$ 175.00/hour
Project Engineer or Geologist	\$ 195.00/hour
Senior Engineer or Geologist	\$ 230.00/hour
Associate Engineer or Geologist	\$ 245.00/hour
Principal/Director	\$ 270.00/hour

### FIELD INSPECTION & TESTING SERVICES

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Staff Engineering Technician	\$ 105.00/hour*
• Services provided under direct supervision of a Senior Engineering Technician	
Senior Engineering Technician	\$ 118.00/hour*
• Inspections for soils/grading, asphalt, concrete, batch plants, piles/caissons, etc.	
• Certifications by ACI, ICC, Caltrans, local jurisdictions, etc.	
Registered Special Inspector ( <i>No 4-hour minimum</i> )	\$ 118.00/hour*
• Certifications by ACI, ICC, Caltrans, local jurisdictions, etc.	
• Reinforced concrete, Post-Tension, Masonry, Welding, Bolting, Fireproofing	
Instrumentation Engineer	\$ 150.00/hour
• Slope inclinometer and Piezometer monitoring	
• Manometer for floor-level surveys	
• Stormwater turbidity & pH meter	
• Groundwater monitoring - pressure transducer, datalogger, water chemistry meter, etc.	
• Pipeline video camera for drains, wells, etc.	
Engineering Seismological Technician (includes 3-channel seismograph)	\$ 150.00/hour
• Blast vibration monitoring	
• Construction vibration & noise monitoring (pile driving, drilling, demolition, etc.)	

**\*Notes:**

- (1) Rates include vehicle, nuclear density gauge, and equipment for testing, inspection, and sampling.
- (2) No 4-hour minimum charges apply.
- (3) Overtime is charged at 1.5 times the base rate. Overtime is defined as time worked on the project in excess of 8 hours per day and all time on Saturdays, Sundays, and holidays.
- (4) Additional hourly surcharge for Prevailing Wage projects for Field Personnel per CA Labor Code §1720, et seq.

Add \$ 27.00/hour

### LABORATORY TESTING SERVICES

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Laboratory Testing	\$ 122.00/hour
<i>(For special materials testing and laboratory costs on a per-test basis, see GMU's Laboratory Fee Schedule)</i>	

### OTHER CHARGES

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Outside Services	Cost + 15%
Reimbursables & Reprographics	Cost



## GENERAL CONDITIONS FOR ENGINEERING AND GEOLOGICAL SERVICES

### 1. **Scope of Work**

Engineer ("GMU Geotechnical, Inc.") shall perform the services outlined in the attached Scope of Work, which may only be amended by Client and Engineer in writing. If Engineer provides Client with a writing confirming the change in scope, it shall become an amendment to this Agreement unless Client objects in writing within five (5) working days after receipt. All work performed by Engineer at the Project is subject to the terms and limitations of this Agreement.

### 2. **Payments to Engineer**

#### 2.1 *Lump Sum*

Portions of the proposal may be on a lump sum basis. All lump sum costs are due in full prior to the initiation of work.

#### 2.2 *Time and Materials*

All out-of-scope work performed under this Agreement shall be on a time and materials basis unless otherwise specifically agreed to in writing by both parties.

#### 2.3 *Late Payment Charge*

All invoices are due upon receipt. If Client fails to make any payment due to Engineer for services and expenses within thirty (30) days after receipt of Engineer's invoices, the amounts due Engineer shall, thereafter, include a late payment charge at the rate of 1½% per month, or the highest rate permitted by law, from the thirtieth day.

### 3. **Standard of Performance; Disclaimer of Warranties**

Engineer shall perform its Services consistent with that level of care and skill ordinarily exercised by other professional engineers under similar circumstances at the time the Services are performed. No warranty, express or implied, is included or intended by this Agreement. Client recognizes that neither Engineer nor any of Engineer's subconsultants owe any fiduciary responsibility to Client.

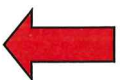
### 4. **Engineer's Estimate of Construction Costs**

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

### 5. **Construction Phase Services**

If the scope of Engineer's work includes observation and testing during the course of construction, Engineer shall:

- 5.1 Make visits to the site at intervals appropriate to the various stages of construction as Client may request, in order to observe the geotechnical conditions encountered by Contractor(s) and the progress and quality of the geotechnical aspects of Contractor(s)' work. Based on information obtained during such visits and on such observations, Engineer shall inform Client of the progress of the geotechnical aspects of the work. Client understands that Engineer may not be on site continuously nor shall Engineer observe all of Contractor's work.



- 5.2 Engineer shall perform such services as are stated in the Scope of Work. Such services shall be performed in accordance with current engineering standards. Client understands that services performed by Engineer on finished work, or work in progress, are taken intermittently and indicate, on a statistical basis, the general acceptability of the work. Testing or observation by Engineer of portions of the work of other parties on a project are not a guarantee of the quality of Contractor's work and shall not relieve such other parties from their responsibility for performing their work in accordance with applicable plans, specifications, and safety requirements.
- 5.3 Engineer shall not supervise, direct, or have control over Contractor(s)' work nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor(s) for the Project, for safety precautions and programs incident to Contractor(s)' work or for any failure of Contractor(s) to comply with Laws and Regulations applicable to Contractor(s) furnishing and performing its work.

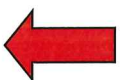
## **6. Client's Responsibilities**

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

- 6.1 Assist and cooperate with Engineer in any manner necessary and within its ability to facilitate Engineer's performance under this Agreement.
- 6.2 Designate a representative who will have authority to receive all notices and information pertaining to this Agreement and who will enunciate Client's policies and decisions and assist as necessary in matters pertaining to the Project and this Agreement. Client's representative will be subject to change by written notice.
- 6.3 Provide access to and/or obtain permission for Engineer to enter upon all property, whether or not owned by Client, as required to perform and complete the Services. Client recognizes that the use of investigative equipment and practice may unavoidably alter conditions or affect the environment at the existing Project Site(s). Engineer will operate with reasonable care to minimize damage to the Project Site(s). The cost of repairing such damage will be borne by Client, and is not included in the Fee unless otherwise stated.
- 6.4 Correctly designate on plans to be furnished to Engineer, the location of all subsurface structures, such as pipes, tanks, cables, and utilities within the property lines of the Project Site(s), and shall be responsible for any damage inadvertently caused by Engineer to any such structure or utility not so designated. Client warrants the accuracy of any information supplied by it to Engineer, and acknowledges that Engineer is entitled to rely upon such information without verifying its accuracy.
- 6.5 Supply to Engineer all information and documents in its possession or knowledge which are relevant to the Services herein described. Prior to the commencement of any Services in connection with a specific property, Client shall notify Engineer of any known potential or possible health or safety hazards existing on or near the Project Site, with particular reference to hazardous materials or conditions.

## **7. Changed Conditions**

If, during the course of performance of this Agreement, conditions or circumstances are discovered which were not contemplated by Engineer at the commencement of this Agreement, Engineer shall notify client in writing of the newly discovered conditions or circumstances, and Client and Engineer shall renegotiate, in good faith, the terms and conditions of this Agreement. If amended terms and conditions cannot be agreed upon within thirty (30) days after notice, Engineer may terminate this agreement and be compensated as set forth in Section 17, "Termination".





## 8. Hazardous Materials

Client understands that Engineer's services under this Agreement are limited to engineering and/or geological services and that Engineer shall have no responsibility to locate, identify, evaluate, treat, or otherwise consider or deal with hazardous materials. Client shall be solely responsible for notifying all appropriate federal, state, municipal, or other governmental agencies, including the potentially affected public, of the existence of any hazardous materials located on or in the project site, or located during the performance of this Agreement. The existence or discovery of hazardous materials shall constitute a Changed Condition under this Agreement.

## 9. Certifications

Engineer shall not be required to execute any certification with regard to work performed, tested, or observed under this Agreement unless: 1) Engineer believes that sufficient work has been performed by Engineer to provide a sufficient basis to issue the certification, 2) Engineer believes that the work performed, tested, or observed meets the criteria of the certification, and 3) the exact form of such certification has been approved by Engineer, in writing, prior to execution of this Agreement. Any certification by Engineer is limited to an expression of professional opinion based upon the service performed by Engineer, and does not constitute a warranty or guarantee, either expressed or implied.

## 10. Allocation of Risk

### 10.1 Limitation of Liability

THE TOTAL CUMULATIVE LIABILITY OF ENGINEER, ITS SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS (COLLECTIVELY "ENGINEER" OR "ENGINEER ENTITIES"), TO CLIENT ARISING FROM SERVICES PERFORMED OR TO BE PERFORMED BY ENGINEER FOR THIS PROJECT WHETHER IN CONTRACT, INDEMNITY, CONTRIBUTION, TORT, OR OTHERWISE, AND INCLUDING ATTORNEY'S FEES DUE UNDER THIS AGREEMENT, SHALL NOT EXCEED 100% OF GROSS COMPENSATION RECEIVED BY ENGINEER UNDER THIS AGREEMENT AND PROVIDED, HOWEVER, THAT SUCH LIABILITY SHALL BE FURTHER LIMITED IN THE FOLLOWING RESPECTS:

ENGINEER ENTITIES SHALL NOT BE LIABLE TO CLIENT FOR ANY LOSSES, DAMAGES, OR CLAIMS ARISING FROM DAMAGE TO SUBTERRANEAN STRUCTURES OR UTILITIES WHICH ARE NOT CORRECTLY SHOWN ON PLANS FURNISHED BY CLIENT TO ENGINEER DURING THE PERFORMANCE OF AUTHORIZED SERVICES OR WHICH ARE NOT CALLED TO ENGINEER'S ATTENTION BY CLIENT.

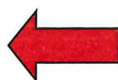
### 10.2 Indemnification

#### 10.2.1 Hazardous Materials

Client agrees to indemnify and hold harmless the Engineer Entities from and against any and all claims, suits, liability, damages, injunctive or equitable relief, expenses, including attorneys' fees, expert fees and costs, which arise from, or which is related to, the existence, disposal, release, discharge, treatment, or transportation of hazardous materials, or the exposure of any person to hazardous materials, or the degradation of the environment due to the presence, discharge, disposal, release of, or exposure to, hazardous material.

#### 10.2.2 Indemnification Provisions

If any indemnification provision is imposed upon the Engineer Entities, such provisions shall not create, exceed, exert, or establish any greater rights, obligations, or responsibilities than those presently existing under the laws of negligence of the State of California, and the applicability of such provisions shall be limited to the insurance limits recoverable for such damages and losses. Engineer's obligations for defense and/or indemnity resulting from such a provision or provisions shall be subject to and construed in accordance with California Civil Code Section 2782.8.





### 10.3 *Third Party Indemnification*

Client agrees to defend, indemnify, and hold Engineer harmless from and against any and all third party claims, demands, causes of action, losses, damages, penalties, judgments, and awards together with Engineer's attorney's fees, expert fees and costs, except for those that are the result of Engineer's sole negligence or willful misconduct. Additionally, and in light of the fact that Engineer's scope of services under this proposal does not include inspection, analysis, or investigation of any kind into the design or construction of existing conditions at the Project, the Client agrees to defend, indemnify, and hold Engineer harmless from and against any and all claims, damages, liabilities, and costs, including all attorney's fees, expert fees and costs of defense, arising out of or in any way related to existing conditions at the project.

### 10.4 *Continuing Agreement*

Client and Engineer agree that any and all protections, limitations of liability, and indemnification agreements noted herein shall extend to the officers, partners, and employees of Client and Engineer, respectively.

## 11. **Engineer's Insurance**

Engineer shall obtain, if reasonably available: 1) statutory Workers' Compensation/Employer's Liability coverage; 2) Commercial General Liability; 3) Automobile Liability; and 4) Professional Liability insurance coverage in policy amounts not less than \$1,000,000. Engineer agrees to issue certificates of insurance evidencing such policies upon written request.

## 12. **Ownership and Maintenance of Documents**

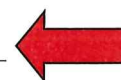
Client-provided documents will remain the property of Client. Unless otherwise specified in the Scope of Work, all documents and information obtained or prepared by Engineer in connection with the performance of the Services, including but not limited to Engineer's reports, boring logs, maps, field data, field notes, drawings and specifications, laboratory test data, and other similar documents (collectively called "Documents") are the property of Engineer, and Engineer shall, in its sole discretion, have the right to dispose of or retain the Documents. Reuse of Engineer's documents for any purpose other than for this Project requires express written authorization from Engineer. Client agrees to defend, indemnify, and hold Engineer harmless from any and all claims resulting from any unauthorized use of Engineer's Documents.

## 13. **Relationship of the Parties**

Engineer shall perform Services under this Agreement as an independent contractor, and its employees shall at all times be under its sole discretion and control. Engineer shall select the means, manner, and method of completing Services without detail, control, or direction from Client.

## 14. **Third Party Reliance Upon Reports**

All Documents are prepared solely for use by Client and shall not be provided to any other person or entity without Engineer's prior written consent, nor shall they be mentioned, communicated, disclosed, or referred to in any offering circular, securities offering, loan application, real estate sales documentation, or similar promotional material, without the express written authorization of Engineer. Client shall defend, indemnify, and hold harmless Engineer, its officers, shareholders, and employees, including Engineer's attorney's fees, expert fees and costs, from and against any action, claim, or proceeding brought by any person or entity claiming to rely upon information or opinions contained in reports or other documents provided to such person or entity, published, disclosed, or referred to without Engineer's written consent.



No other party other than Client may rely, and Client shall make no representations to any party that such party may rely, on Documents without Engineer's express written authorization.

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Engineer. Engineer's services under this Agreement are being performed solely for the Client's benefit, and no other entity shall have any claim against the Engineer because of this Agreement or the performance or non-performance of services hereunder. The Client agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.

#### 15. Assignment and Subcontracts

Neither party shall assign this Agreement, or any part thereof, without the written consent of the other party. Engineer may subcontract for the services of others without obtaining Client's consent where Engineer deems it necessary or desirable to have others perform certain Services.

#### 16. Suspension and Delays

Client may, at any time, by ten (10) days written notice, suspend performance of all or any part of the Services by Engineer. Should such suspension continue for a period of sixty (60) days, then Engineer may terminate this Agreement and Client shall pay Engineer as set forth under Section 17, "Termination".

#### 17. Termination

##### 17.1 Termination for Convenience

Engineer and Client may terminate this Agreement for convenience upon thirty (30) days written notice delivered or mailed to the other party.

##### 17.2 Termination for Cause

In the event of material breach of this Agreement, non-breaching party may terminate if upon ten (10) days written notice, personally delivered, mailed, first class mail postage prepaid, or by electronic transmission with proof of receipt to the other party, which termination notice shall state the basis for the termination. The Agreement shall not be terminated for cause if the breaching party cures the breach within the ten (10) day period.

##### 17.3 Payment on Termination

In the event of termination, other than caused by a material breach of this Agreement by Engineer, Client shall pay Engineer for the Services performed through the termination notice date, and for any necessary Services and expenses incurred in connection with the termination of the project, including but not limited to, the costs of completing analysis, records, and reports necessary to document job status at the time of termination, and costs associated with termination of subcontractor contracts. Such compensation shall be based upon the schedule of fees then currently used by Engineer.

##### 17.4 Claims Waiver

Client and Engineer hereby waive all claims against each other for punitive and consequential damages including, but not limited to, loss of use or lost profits.

#### 18. Disputes

All disputes between Engineer and Client shall be subject to non-binding mediation. Either party may demand mediation by serving a written notice stating the essential nature of the dispute, the amount of time or money claimed, and requiring that the matter be mediated within forty-five (45) days of service of notice. The mediation shall be administered by JAMS Orange County in accordance with their most recent construction Mediation Rules, or by such other person or organization as the parties may agree upon.





No action or suit may be commenced unless the mediation did not occur within forty-five (45) days after service of notice, the mediation occurred but did not resolve the dispute, or a statute of limitation would elapse if suit was not filed prior to the forty-five (45) days after service of notice.

**19. Attorney Fees / Venue / Arbitration**

Client and Engineer agree that the laws of the State of California govern the construction and interpretation of this Agreement and any dispute between the parties, including without limitation, disputes arising out of or relating to this Agreement, the professional relationship between the parties, and the professional services rendered by Engineer to Client shall be decided by binding arbitration under the arbitration rules of the JAMS to take place in Orange County, California. The fees for the arbitration and the arbitrator shall be divided equally between the parties subject to adjustment by the arbitrator. The arbitrator shall set forth his or her findings in writing and served upon the parties. The arbitration award may be enforced by the Orange County Superior Court. In the event enforcement proceedings and/or legal action arises relating to this Agreement, the interpretation thereof, or the failure of any party to perform the terms of Agreement, the prevailing party in the arbitration as well as in such action shall be, in addition to damages, injunctive relief or any other relief, entitled to reasonable attorneys' fees and costs incurred in such an action. The parties waive their rights to a trial by jury.

**20. Integration and Severability**

These General Conditions and any attached proposal(s) reflect the entire Agreement of the parties with respect to its terms and supersedes all prior agreements, whether written or oral. If any portion of this Agreement is found to be void or voidable, such portion shall be deemed stricken and the Agreement shall be reformed to as closely approximate the stricken portions as the law allows.

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*End of General Conditions*

