

# CONSULTANT SERVICES MASTER AGREEMENT

## (ENVIRONMENTAL SITE ASSESSMENT SERVICES)

This AGREEMENT is made and entered into this [REDACTED] day of [REDACTED] in the year 20 [REDACTED] (“EFFECTIVE DATE”), by and between the **COVINA-VALLEY UNIFIED SCHOOL DISTRICT**, hereinafter referred to as (the “DISTRICT”), and [REDACTED], hereinafter referred to as “CONSULTANT”. The DISTRICT and the CONSULTANT are sometimes referred to herein singularly as a “PARTY” and collectively as the “PARTIES.” This AGREEMENT is made with reference to the following facts:

**WHEREAS**, the DISTRICT requires environmental site assessment services for various projects located within the DISTRICT. The DISTRICT shall request separate proposals from the CONSULTANT for each project. When the District has approved a proposal, the subject project under that proposal shall be referred to in this Agreement as the “PROJECT;”

**WHEREAS**, CONSULTANT shall at all times retain appropriately qualified and California licensed, approved and/or certified personnel as appropriate, and shall at all times maintain proper qualifications, to perform the duties required for investigation, analysis, and reporting on school sites and building construction projects and to perform the services required by this AGREEMENT; and

**WHEREAS**, CONSULTANT has indicated its willingness and commitment to provide its specialized testing and inspection services to the DISTRICT on the terms hereinafter set forth in this AGREEMENT.

**NOW, THEREFORE**, the PARTIES hereto agree as follows:

### **ARTICLE I** **SCOPE AND SERVICES TO BE PROVIDED BY CONSULTANT**

1. Services to be Provided by the CONSULTANT. The CONSULTANT shall provide to the DISTRICT on the terms set forth herein all the environmental site assessment services, including research, investigation, testing, analysis, reporting, monitoring, confirmation, and other related services necessary and/or requested by the DISTRICT to comply with applicable law, regulation, best practices, and this AGREEMENT. The CONSULTANT’s basic services shall include those services set forth in this AGREEMENT as well as those services articulated in the CONSULTANT’s proposal which shall be attached hereto and incorporated herein as **EXHIBIT “A”** (the CONSULTANT’s “PROPOSAL”). In the event of a discrepancy, inconsistency, conflict, or other difference between the terms of the CONSULTANT’s PROPOSAL with this AGREEMENT, the PARTIES agree that the terms of this AGREEMENT shall govern and be controlling.

2. CONSULTANT’s Certifications, Representations and Warranties. CONSULTANT makes the following certifications, representations, and warranties for the benefit of the DISTRICT and CONSULTANT acknowledges and agrees that the DISTRICT, in deciding to engage CONSULTANT pursuant to this AGREEMENT, is relying upon the truth and validity

of the following certifications, representations and warranties and their effectiveness throughout the term of this AGREEMENT and the course of CONSULTANT's engagement hereunder:

a. CONSULTANT is qualified in all respects to provide to the DISTRICT all of the services contemplated by this AGREEMENT and, to the extent required by any applicable laws, CONSULTANT has all such licenses and/or governmental approvals as would be required to carry out and perform, for the benefit of the DISTRICT, such services as are called for hereunder.

b. CONSULTANT, in providing the services and in otherwise carrying out its obligations to the DISTRICT under this AGREEMENT, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including worker's compensation and equal protection and non-discrimination laws.

c. If applicable, CONSULTANT shall be properly registered with the Department of Industrial Relations and qualified to perform public works in accordance with Labor Code sections 1725.5 and 1771.1 at all times during the term of this AGREEMENT.

## **ARTICLE II**

### **CONSULTANT'S SERVICES AND RESPONSIBILITIES**

1. The CONSULTANT shall obtain preliminary project planning documents and project information from the project architect and DISTRICT planning personnel and shall review the PROJECT's preliminary plans or if available the DSA approved Construction Documents, and determine affected areas that will or may need to be investigated for the presence of toxics in soil.

2. The CONSULTANT shall provide a proposal to the DISTRICT to include the proposed scope and cost of research, investigation/sampling, laboratory testing and analysis, and preparation of reports and if needed, removal/remediation specifications.

3. If applicable, subsequent to the completion of the Reports and preparation of the Specifications and Scope of work, and after review of the DSA-approved Project plans, the CONSULTANT shall provide a proposal to the DISTRICT to include the proposed scope and cost of monitoring and providing oversight of the removal/remediation, confirmation testing, and final report preparation.

4. The CONSULTANT shall work and communicate with the DISTRICT, the Project Inspector, the Architect, the Construction/Project Manager, and the Removal/Remediation Contractor as needed throughout the completion of the PROJECT to coordinate the monitoring and removal/remediation activities.

5. In the event the CONSULTANT identifies unforeseen conditions and/or material deficiencies or deviations from the removal/remediation Scope of work and Specifications, the CONSULTANT shall immediately notify the DISTRICT and Contractor and inform the

Contractor of proper procedures, with a follow-up written report to the DISTRICT of such deviation or material deficiencies. The CONSULTANT shall provide a copy of each report to the Project Inspector, the Architect, the Construction/Project Manager, and the Contractor.

6. If applicable, coordinate and work with the California Department of Toxic Substances Control, and in accordance with its guidelines and directives.

7. Contracted Firms may be required to provide, as requested by the District, Environmental Site Assessment Services including but not limited to any or all the following:

a. Research, Testing of Site Soils, Report Preparation, and Remediation Oversight

- i. The Firm shall perform any or all of the following and related tasks required, as requested by the District.
  - Conduct independent risk assessment for existing site areas or other parcels based on a PK-12 use which may include preschool, day care, grades K-high school age students, staff, community members, and construction workers. The purpose of the assessment will be to identify specific areas or sites as defined and evaluate the presence of hazardous materials and the associated feasibility and cost of remediation.
  - Conduct a site reconnaissance led by an environmental professional to assess the property or properties and prepare a full Phase I Report as needed. This shall include, but may not be limited to, a reasonable observation of the property and structures, the periphery of the property, the interior common areas of structures, and a representative sample of occupant spaces. Items such as current and past uses of the property and adjoining properties; obvious geologic, hydrologic, and topographic conditions; structures; roads; potential hazardous substances and petroleum products; storage tanks; odors; pools of liquid; drums; containers; surface waters; suspected fill materials; stained soil or other potential/suspected contamination. Conduct research and observations of radon potential, mold issues, oil and gas exploration activities, and methane zone determination, if indicated.
  - Conduct historical Phase I Environmental Site Assessments (ESA) in accordance with current American Society of Testing Materials (ASTM) standards for Environmental Site Assessments (E-1527-05), including any recent changes or modifications to the ASTM standards, and the EPA All Appropriate Inquiry (AAI) Standard (see attached EPA document for information regarding AAI); and prepare full Phase I reports as needed and provide recommendations for any further actions.
  - Conduct complete Phase II Environmental Site Investigations, including soil and groundwater investigations, and prepare reports and recommendations.
  - Conduct environmental sampling, including project management of tasks completed, notify Underground Services Alert (USA) of the pending field activities

a minimum of 72 hours prior to the commencement of field activities, Sub-Soil Sampling, Sub-Slab Soil Vapor Sampling, Arsenic Sampling, PAH Sampling, other sampling/studies as may be indicated or required, and Report Preparation including Health Risk Assessment (HRA) of the existing data for the site(s)/property(s).

- Evaluate and provide a magnitude of cost estimate for remediation of the sites for unrestricted land use.
- Gather historical sources, including building department records, historical aerial photographs, local street directories, fire insurance maps, USGS 7.5 Minute Topographical Maps, and other credible sources of past uses or occupancies, review as available.
- Conduct Interviews with past and present owners, occupants, neighbors, and/or other persons who are familiar with the property in person, by telephone, or in writing regarding the history, operations, management, waste management practices, and other environmental considerations for the subject property as those persons are available and open to an interview.
- Regulatory interviews of State and local government officials in person, by telephone, or in writing to obtain information on permits and compliance history, and information indicating recognized environmental conditions in connection with the site(s)/property(s).
- Conduct radius map search of state and federal databases according to the current ASTM and AAI standard.
- Conduct Phase III Remedial Operations and Monitoring including maintenance and monitoring of soil and groundwater remedial equipment.
- Evaluate proposed Work Plans, Regulatory Orders, Closure Plans and other significant documents for completeness, correctness, effectiveness, feasibility of achieving stated objectives, and potential deficiencies. Provide recommendations regarding appropriate modifications, alternatives, and potential liabilities.

b. Testing of Import/Export Soil

- i. The Firm shall test soil intended for import or export per the notes below, and may be requested to perform additional tests, if needed.

**General Import/Export Notes:**

- 1) The District's geotechnical / soils consultant shall ensure that import soils are suitable (from a geotechnical /soils standpoint) for usage as import before the cost and effort of environmental sampling is incurred.

- 2) Environmental sampling of import/export soil should be completed in general accordance with the Department of Toxic Substances Control (DTSC) *Information Advisory – Clean Imported Fill Material guidelines*, dated October 2001, or most recent version.
- 3) Import/export soil sampling should be completed under the direction of a State of California licensed Professional Geologist or Engineer experienced with similar work.
- 4) All environmental import/export soil sampling should be completed, and results approved by District and their environmental consultant, before any soil is moved to or from a district property.

**Project Specific Notes:**

The following information must be specified when requesting import sampling for a specific project:

- A) The volume of import needed/export soil to be removed (in cubic yards)
- B) The intended usage and location of the potential import (in school yard? beneath school building? at district maintenance yard?, etc.)
- C) The location of the import source (address or other specific description) – in order to review historical use of this location
- D) Whether the source of import/export is in a stockpile or in-place (i.e., in-ground)
- E) The number of soil samples collected should be based on the above-mentioned DTSC guidelines.
- F) Samples should be collected in a manner which is representative of the body of potential import/export soils (i.e., from various depths and types of soil for in-place soil)
- G) Sampling of soils should be completed using appropriate containers and sample volumes for the analytical methods to be used.
- H) Sampling methods may include use of hand trowels, hand augers, backhoes, etc., depending upon the depth and occurrence (i.e., in place or stockpiled) of the potential import/export soils. All sampling equipment should be cleaned with an Alconox solution and double rinsed (potable tap and then deionized water) prior to use at each sampling location.
- I) The potential import/export soils which are sampled should be identified and demarcated so that they can be found and removed if laboratory analytical results are approved.
- J) Sample compositing may or may not be acceptable depending upon the homogeneity of the import source, but compositing for VOC, SVOC, Title 22 Metal, Pesticide or Herbicide analyses is generally not acceptable.
- K) The analytical methods for testing of soil samples should be determined per the judgement of the licensed geologist or engineer,

and in general accordance with above-mentioned DTSC guidelines.  
Possible analytical tests include:

As the need may arise, the District may require and may utilize any other services the firm is qualified to provide.

8. If applicable, the CONSULTANT and any subcontractors (of any tier) performing work pursuant to this AGREEMENT must comply with the Labor Code sections 1725.5 and 1771.1 and must be properly and currently registered with DIR and qualified to perform public works pursuant to Labor Code section 1725.5 throughout the duration of this AGREEMENT. CONSULTANT shall be solely responsible for ensuring compliance with Labor Code section 1725.5 as well as any requirements implemented by DIR applicable to its services or its subcontractors throughout the term of this AGREEMENT and in no event shall CONSULTANT be granted increased payment from the DISTRICT a result of CONSULTANT's efforts to maintain compliance with the Labor Code or any requirements implemented by the DIR. Failure to comply with these requirements shall be deemed a material breach of this AGREEMENT and grounds for termination for cause. If applicable, the CONSULTANT and all subcontractors shall furnish certified payroll records as required pursuant Labor Code section 1776 directly to the Labor Commissioner in accordance with Labor Code section 1771.4 on at least on a monthly basis (or more frequently if required by the DISTRICT or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE).

9. All laws and regulations applicable to the PROJECT shall be deemed to include and incorporate any revisions or updates thereto.

### **ARTICLE III** **TERMINATION**

1. This AGREEMENT may be terminated by either PARTY upon fourteen (14) days written notice to the other PARTY in the event of a substantial failure of performance by such other PARTY, including insolvency of CONSULTANT; or if the DISTRICT should decide to abandon or indefinitely postpone the PROJECT.

2. In the event of a termination based upon abandonment or postponement by DISTRICT, the DISTRICT shall pay to the CONSULTANT for all services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement plus any sums due the CONSULTANT for Board approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this AGREEMENT, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings, reports and/or other documents whether delivered to the DISTRICT or in the possession of the CONSULTANT. In the event termination is for a substantial failure of

performance, all damages and costs associated with the termination, including increased consultant and replacement consultant costs shall be deducted from payments to the CONSULTANT.

3. In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience in accordance with Article III, Section 4 below, and CONSULTANT shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense, or liability may be claimed, requested, or recovered by CONSULTANT.

4. This AGREEMENT may be terminated without cause by DISTRICT upon fourteen (14) days written notice to the CONSULTANT. In the event of a termination without cause, the DISTRICT shall pay to the CONSULTANT for all services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination plus any sums due the CONSULTANT for Board approved extra services.

5. In the event the CONSULTANT is terminated, with or without cause, the CONSULTANT shall personally provide all the original Project Inspection Cards prepared or obtained by the CONSULTANT in connection with the PROJECT to the assuming DSA inspector or the DSA as directed by the DISTRICT. All original Project Inspection Cards must be provided to the DSA assuming inspector or the DSA, as applicable, within 48 hours of the effective date of the CONSULTANT's termination. Under no circumstances shall the CONSULTANT withhold any original Project Inspection Cards related to the PROJECT upon the CONSULTANT's termination. The CONSULTANT shall be responsible for any delays on the PROJECT that arise out of the CONSULTANT's failure to provide the original Project Inspection Cards to the assuming DSA inspector or the DSA as directed by the DISTRICT in accordance with this section. Upon the effective date of the CONSULTANT's termination, the CONSULTANT shall provide copies of all current Project Inspection Cards in the CONSULTANT's Project File to the DISTRICT along with any other DISTRICT PROPERTY as further described in Article IV below.

6. In the event of a dispute between the PARTIES as to performance of the work or the interpretation of this AGREEMENT, or payment or nonpayment for work performed or not performed, the PARTIES shall attempt to resolve the dispute. Pending resolution of this dispute, CONSULTANT agrees to continue the work diligently to completion. If the dispute is not resolved, CONSULTANT agrees it will neither rescind the AGREEMENT nor stop the progress of the work, but CONSULTANT's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the PROJECT has been completed, and not before. The PARTIES may agree in writing to submit any dispute between the PARTIES to arbitration.

7. THE PARTIES UNDERSTAND AND AGREE THAT ARTICLE III OF THIS AGREEMENT SHALL GOVERN ALL TERMINATION RIGHTS AND PROCEDURES BETWEEN THE PARTIES. ANY TERMINATION PROVISION THAT IS ATTACHED TO THIS AGREEMENT AS AN EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE PARTIES.

**ARTICLE IV**  
**REPORTS AND/OR OTHER DOCUMENTS**

1. The reports and/or other documents that are prepared, reproduced, maintained and/or managed by the CONSULTANT or CONSULTANT's consultants in accordance with this AGREEMENT, shall be and remain the property of the DISTRICT (hereinafter the "PROPERTY"). The DISTRICT may provide the CONSULTANT with a written request for the return of its PROPERTY at any time. Upon CONSULTANT's receipt of the DISTRICT's written request, CONSULTANT shall return the requested PROPERTY to the DISTRICT within seven (7) calendar days.

**ARTICLE V**  
**ACCOUNTING RECORDS OF THE CONSULTANT**

1. Records of the CONSULTANT's direct personnel and reimbursable expenses pertaining to any extra services provided by the CONSULTANT, which are in addition to those services already required by this AGREEMENT, and any records of accounts between the DISTRICT and CONSULTANT shall be kept on a generally recognized accounting basis and shall be available to the DISTRICT or DISTRICT's authorized representative at mutually convenient times.

**ARTICLE VI**  
**COMPENSATION TO THE CONSULTANT**

1. The DISTRICT shall compensate the CONSULTANT as follows:
  - a. The DISTRICT agrees to pay the CONSULTANT in accordance with the fee, rate and/or price schedule information set forth in EXHIBIT "A," inclusive of reimbursable expenses, for performing the basic services required by this AGREEMENT subject to the limitations set forth herein this Article VI, Section 1(a), and in accordance with the CONSULTANT'S approved proposal. The CONSULTANT may adjust its rates on an annual basis. CONSULTANT shall invoice costs monthly for the services provided pursuant to this AGREEMENT from the time the CONSULTANT begins work on the PROJECT. All costs must be supported by an invoice, receipt, or other acceptable documentation.
  - b. Invoices requesting payment for Additional Services performed in accordance with Article VII below must reflect the compensation approved by the DISTRICT and include a copy of the DISTRICT's written authorization. The DISTRICT's prior written authorization is an express condition precedent to any payment by the DISTRICT for Additional Services and no claim by the CONSULTANT for additional compensation related to Additional Services shall



be valid absent such prior written approval by the DISTRICT to proceed with such Additional Services as required by Article VII.

**ARTICLE VII**  
**ADDITIONAL CONSULTANT SERVICES**

1. CONSULTANT shall notify the DISTRICT in writing of the need for additional services required due to circumstances beyond the CONSULTANT's control. CONSULTANT shall obtain written authorization from the DISTRICT before rendering any additional services. The DISTRICT may also require CONSULTANT to perform additional services which are, in the DISTRICT's discretion, necessary. Compensation for all additional services shall be negotiated and approved in writing by the DISTRICT before CONSULTANT performs such additional services. CONSULTANT shall not be entitled to any compensation for performing additional services that are not previously approved by the DISTRICT in writing. Additional services shall include:

a. Making material revisions in reports or other documents when such revisions are required by the enactment or revision of laws, rules, or regulations subsequent to the preparation and completion of such documents.

b. Preparing reports and other documentation and supporting data, and providing other services in connection with project modifications required by causes beyond the control of the CONSULTANT which are not the result of the direct or indirect negligence, errors, or omissions on the part of CONSULTANT.

c. If the DISTRICT requests additional shifts to complete the services articulated in Article II and EXHIBIT "A" where the requests for additional shifts do not arise from the direct or indirect negligence, errors, or omissions on the part of CONSULTANT. The CONSULTANT's compensation is expressly conditioned on the lack of fault of the CONSULTANT.

d. Providing any other services not otherwise included in this AGREEMENT or not customarily furnished in accordance with the generally accepted practice in the CONSULTANT's industry.

**ARTICLE VIII**  
**TERM**

1. This agreement shall be for a term of five years, and may be extended by written amendment signed by both PARTIES.

**ARTICLE IX**

## MISCELLANEOUS

1. To the fullest extent permitted by law, CONSULTANT agrees to indemnify, and hold DISTRICT entirely harmless from all liability arising out of:

a. Workers Compensation and Employers Liability: Any and all claims under Workers' Compensation acts and other employee benefit acts with respect to CONSULTANT's employees or CONSULTANT's subcontractor's employees arising out of CONSULTANT's work under this AGREEMENT; and

b. General Liability: Liability for damages for (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of law or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by the CONSULTANT or the DISTRICT, or any person, firm or corporation employed by the CONSULTANT or the DISTRICT upon or in connection with the PROJECT, except for liability resulting from the sole or active negligence, or willful misconduct of the DISTRICT, its officers, employees, agents or independent consultants who are directly employed by the DISTRICT;

c. Professional Liability: Any loss, injury to or death of persons or damage to property caused by any act, neglect, default or omission of the CONSULTANT, or any person, firm or corporation employed by the CONSULTANT, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation including the DISTRICT, arising out of, or in any way connected with the services performed by CONSULTANT in accordance with this AGREEMENT, including injury or damage either on or off DISTRICT property; but not for any loss, injury, death or damages caused by the sole or active negligence, or willful misconduct of the DISTRICT.

d. The CONSULTANT, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings, arising out of Article VIII, Sections 1(a) and (b) above, that may be brought or instituted against the DISTRICT, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the DISTRICT, its officers, agents or employees in any action, suit or other proceedings as a result thereof. With regard to the CONSULTANT's obligation to indemnify for acts of professional negligence as set forth in Article VIII, Section 1(c) above, such obligation does not include the obligation to provide defense counsel or to pay for the defense of actions or proceedings brought against the DISTRICT, but rather to reimburse the DISTRICT for attorney's fees and costs incurred by the DISTRICT in defending such actions or proceedings.

e. THE PARTIES UNDERSTAND AND AGREE THAT ARTICLE VIII, SECTION 1 OF THIS AGREEMENT SHALL BE THE SOLE INDEMNITY, AS DEFINED BY CALIFORNIA CIVIL CODE § 2772, GOVERNING THIS

AGREEMENT. ANY OTHER INDEMNITY THAT MAY BE ATTACHED TO THIS AGREEMENT AS AN EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE PARTIES.

f. ANY ATTEMPT TO LIMIT THE CONSULTANT'S LIABILITY TO THE DISTRICT IN AN ATTACHED EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE DISTRICT AND THE CONSULTANT.

2. CONSULTANT shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to DISTRICT which will protect CONSULTANT and DISTRICT from claims which may arise out of or result from CONSULTANT's actions or inactions relating to the AGREEMENT, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

a. The CONSULTANT shall carry Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California. However, such amount shall not be less than ONE MILLION DOLLARS (\$1,000,000).

b. Commercial general liability insurance with limits of not less than TWO MILLION DOLLARS (\$2,000,000) and automobile liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) for bodily injury and property damage liability, per occurrence, including coverage for the following:

1. Owned, non-owned and hired vehicles;
2. Blanket contractual;
3. Broad form property damage;
4. Products/completed operations; and
5. Personal injury.

c. Professional liability insurance, including contractual liability, with limits of \$1,000,000, per claim. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least five (5) years thereafter and/or at rates consistent with the time of execution of this AGREEMENT adjusted for inflation. In the event that CONSULTANT subcontracts any portion of CONSULTANT's duties, CONSULTANT shall require any such subcontractor to purchase and maintain insurance coverage as provided in this subparagraph. Failure to maintain professional liability insurance is a material breach of this AGREEMENT and grounds for immediate termination.

d. Each policy of insurance required in Article VIII, Section 2(b) above shall name DISTRICT and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of CONSULTANT hereunder, such policy is primary and any insurance carried by DISTRICT is excess and non-contributory with such primary insurance; shall state that not less than thirty (30)

days' written notice shall be given to DISTRICT prior to cancellation; and, shall waive all rights of subrogation. CONSULTANT shall notify DISTRICT in the event of material change in, or failure to renew, each policy. Prior to commencing work, CONSULTANT shall deliver to DISTRICT certificates of insurance as evidence of compliance with the requirements herein. In the event CONSULTANT fails to secure or maintain any policy of insurance required hereby, DISTRICT may, at its sole discretion, secure such policy of insurance in the name of and for the account of CONSULTANT, and in such event, CONSULTANT shall reimburse DISTRICT upon demand for the cost thereof.

3. CONSULTANT, in the performance of this AGREEMENT, shall be and act as an independent contractor. CONSULTANT understands and agrees that CONSULTANT and all of CONSULTANT's 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 Worker's Compensation. CONSULTANT assumes the full responsibility for the acts and/or omissions of CONSULTANT's employees or agents as they relate to the services to be provided under this AGREEMENT. CONSULTANT shall assume full responsibility for payment of any applicable prevailing wages and all federal, state, and local taxes or contributions, including unemployment insurance, social security, and income taxes for the respective CONSULTANT's employees. CONSULTANT shall fully defend and indemnify the DISTRICT from any claims, damages or any liability arising from or related to CONSULTANT or its subcontractors' failure to comply with any applicable prevailing wage laws and requirements.

4. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of any third party against either the DISTRICT or CONSULTANT.

5. The DISTRICT and CONSULTANT, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other PARTY to this AGREEMENT with respect to the terms of this AGREEMENT. CONSULTANT shall not assign this AGREEMENT.

6. This AGREEMENT shall be governed by the laws of the State of California.

7. THIS AGREEMENT SHALL NOT INCLUDE OR INCORPORATE THE TERMS OF ANY GENERAL CONDITIONS, CONDITIONS, MASTER AGREEMENT OR ANY OTHER BOILERPLATE TERMS OR FORM DOCUMENTS PREPARED BY THE CONSULTANT. THE ATTACHMENT OF ANY SUCH DOCUMENT TO THIS AGREEMENT AS EXHIBIT "A" SHALL NOT BE INTERPRETED OR CONSTRUED TO INCORPORATE SUCH TERMS INTO THIS AGREEMENT UNLESS THE DISTRICT APPROVES OF SUCH INCORPORATION IN A SEPARATE WRITING SIGNED BY THE DISTRICT. ANY REFERENCE TO SUCH BOILERPLATE TERMS AND CONDITIONS IN THE PROPOSAL OR QUOTE SUBMITTED BY THE CONSULTANT SHALL BE NULL AND VOID AND HAVE NO EFFECT UPON THIS AGREEMENT. PROPOSALS, QUOTES, STATEMENT OF

QUALIFICATIONS AND OTHER SIMILAR DOCUMENTS PREPARED BY THE CONSULTANT MAY BE INCORPORATED INTO THIS AGREEMENT AS EXHIBIT "A" BUT SUCH INCORPORATION SHALL BE STRICTLY LIMITED TO THOSE PARTS DESCRIBING THE CONSULTANT'S SCOPE OF WORK, RATE AND PRICE SCHEDULE AND QUALIFICATIONS.

8. Each of the PARTIES have had the opportunity to, and have to the extent each deemed appropriate, obtained legal counsel concerning the content and meaning of this AGREEMENT. Each of the PARTIES agrees and represents that no promise, inducement, or agreement not herein expressed has been made to effectuate this AGREEMENT. This AGREEMENT represents the entire AGREEMENT between the DISTRICT and CONSULTANT and supersedes all prior negotiations, representations, or agreements, either written or oral. This AGREEMENT may be amended or modified only by an agreement in writing signed by both the DISTRICT and the CONSULTANT.

9. Time is of the essence with respect to all provisions of this AGREEMENT.

10. If either PARTY becomes involved in litigation arising out of this AGREEMENT or the performance thereof, each PARTY shall bear its own litigation costs and expenses, including reasonable attorney's fees.

11. All exhibits referenced herein and attached hereto shall be deemed incorporated into and made a part of this AGREEMENT by each reference as though fully set forth in each instance in the text hereof with the exception of those documents or provisions that are subject to the exclusions specifically set forth in this AGREEMENT.

12. In accordance with California Education Code Section 17604, this AGREEMENT is not a valid or enforceable obligation against the DISTRICT until approved or ratified by motion of the Governing Board of the DISTRICT duly passed and adopted.

13. This AGREEMENT shall be liberally construed to effectuate the intention of the PARTIES with respect to the transaction described herein. In determining the meaning of, or resolving any ambiguity with respect to any word, phrase or provision of this AGREEMENT, neither this AGREEMENT nor any uncertainty or ambiguity herein will be construed or resolved against either PARTY (including the PARTY primarily responsible for drafting and preparation of this AGREEMENT), under any rule of construction or otherwise, it being expressly understood and agreed that the PARTIES have participated equally or have had equal opportunity to participate in the drafting hereof.

14. This AGREEMENT may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, all of which shall be sufficient evidence of this AGREEMENT.

The PARTIES, through their authorized representatives, have executed this AGREEMENT as of the day and year first written above.

**CONSULTANT:**

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

**DISTRICT:**

Covina-Valley Unified School District

By: \_\_\_\_\_

\_\_\_\_\_

**EXHIBIT “A”**

***(INSERT CONSULTANT’S PROPOSAL)***