

## PROFESSIONAL SERVICES AGREEMENT: CONSTRUCTION MANAGEMENT CONSULTING

This Agreement for Professional Services - Construction Management Services ("Agreement"), by and between Paso Robles Joint Unified School District ("District") and Harris Construction Co., Inc. ("Consultant"), is for professional services ("Services") to be performed by a nonemployee of District. District and Consultant herein named mutually agree to the following terms and conditions:

1. **Duties.** Consultant agrees to assist District with professional services, specifically construction management services, which include attendance in meetings as requested by the District, review of general Consultant correspondence, cost proposals, schedule documentation, and progress billings all as it relates closeout and completion of the Project (as directed by the District). Said Services as further defined in *Exhibit B* shall be performed on an "as required/requested" basis. Consultant will determine the method, details, and means of performing the Services and may perform the services required by this Agreement at the place of Consultant's choosing or in any location mandated by the nature of the services required. Consistent with this requirement, Consultant may represent, perform services for, or be employed by any additional persons or companies as Consultant sees fit. Consultant will not be acting as the General Contractor, nor providing General Contractor services or activities.

2. **Compensation.** In consideration of the services performed by Consultant, Company shall pay Consultant according to the following schedule:

- a. See *Exhibit A* for schedule of rates. Work shall proceed on hourly basis not-to-exceed \$15,000. Once the not-to-exceed amount has been reached, no further work shall proceed until not-to-exceed amount has been extended and authorized in writing by District.
- b. Consultant shall submit invoices by the 5th of each month for services rendered within the previous calendar month. Consultant invoices will be payable on the 20<sup>th</sup> of the month. If the 20<sup>th</sup> is on a weekend or a holiday, the invoice will be payable on the next business day.
- c. The invoices shall include the following information: Consultant's business name; address; telephone number; employer identification number; and a description of the services performed by Consultant, including date(s), name/job title and the time expended.

3. **Term.** The term of this Agreement shall commence on DATE and continue until terminated as otherwise set forth in section 4 below. Any and all prior arrangements, understandings, and contracts, or offers or representations are canceled and void in all their terms and conditions. 4. **Termination.** Notwithstanding the term set forth above in paragraph 3, the terms of this Agreement may be terminated at any time during the term by either party upon 3 days written notice to the other party at the party's last known address, which may be provided by facsimile, email or overnight mail. District may terminate this Agreement at any time, without cause, by paying Consultant for completed Work Product, at an agreed upon estimated value of that Work. Such right of termination shall be in addition to, and not in lieu of, any other remedy to which the terminating party may be entitled. Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notification to the breaching party. Termination shall



be effective immediately on receipt of the notice. For the purpose of this section, material breach of this Agreement shall include, but not be limited to the following:

- a. Nonpayment of compensation by District after 10 days written demand for payment.
- b. Failure of Contractor to perform the services described in Paragraph 2 satisfactorily.
- c. Violation of Paragraph 17, below, confidentiality and anti-solicitation covenants.

**5. District Contact.** Consultant shall contact District designee, \_\_\_\_\_ with any questions regarding performance of the services outlined above.

**6. Independent Consultant.** It is the express intention of the parties that Consultant be an independent Consultant and not an employee or agent of District in performing the services specified by this Agreement. Therefore, nothing in this Agreement shall be interpreted or construed in any way as creating or establishing an employment relationship between District and Consultant or any employee or agent of Consultant. The parties expressly acknowledge that Consultant is not now, and shall not become or be considered, an employee or agent of District for insurance, benefits, payroll, state or federal tax purposes, or for any other purpose. District assumes no responsibility for worker's compensation liability. District likewise assumes no responsibility for liability for loss, damage, or injury to person(s) or property during or relating to the performance of service under this Agreement. In the performance of Consultant's duties and obligations under this Agreement, it is mutually understood and agreed that Consultant is at all times acting and performing as an independent Consultant. District shall neither have nor exercise control or direction over the methods by which Consultant shall perform Consultant's work and functions except that Consultant is expected to perform at all times in accordance with reasonable business practices, and that the sole interest of District is to ensure that the services of Consultant shall be performed and rendered in a competent, efficient and satisfactory manner.

**7. Indemnity.** Consultant agrees to hold harmless and to indemnify District for any injury to person or property sustained by Consultant; and any injury to person or property caused by any act, neglect, default or omission of Consultant, and Consultant at its/his/her own cost, expense and risk, shall defend any and all actions, suits or other legal proceedings that may be instituted against District for any such claim or demand. Nothing herein provided shall be construed to require Consultant to hold harmless or indemnify District for liability or damages resulting from the negligence or willful act, or omission of District or its officers, agents, or employees.

The District agrees to indemnify, defend and hold harmless the Consultant, its members, officers, directors, employees and each person who controls Consultant or any of its affiliates from and against any losses, claims, damages, liabilities and expenses whatsoever (including reasonable attorneys fees) to which they or any of them may become subject arising out of or related to Consultant's performance under this Agreement.

**8. Insurance:**

- A. Professional Liability Insurance: During the term of the Agreement, Consultant shall maintain a Professional Liability Insurance (errors and omissions) policy in the amount of not less than one million dollars (\$1,000,000.00).
- B. Workers' Compensation and General Liability Insurance: During the term of this Agreement, Consultant shall procure and keep in force for the length of time specified in the following sections, at Consultant's own cost and expense, the following policies of insurance, certificates or binder as necessary to represent that coverage is in place with companies doing



business in California and which are acceptable to the District. Consultant shall provide District with copies of all insurance policies. Consultant shall, pending acceptance of insurance supply and furnish District with information showing such insurance policies are in force with the written understanding of each insurer to give the District thirty (30) days prior written notice of cancellation, termination of material change of such insurance coverage. The insurance shall at a minimum include:

- a. Workers' Compensation Insurance as required by the laws of the State of California during the terms of this Agreement. Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provision of that Code. Consultant shall comply with the provisions of Section 3700 of the Labor Code before commencing the performance of the work under this Agreement.
- b. Commercial General Liability insurance, including but not limited to, Personal Injury, Broad Form Property Damage, Contractual (as needed), Products and Completed Operations or Owners and Consultants Protective Liability. The policy shall contain a severability of interest clause or cross liability clause or the equivalent thereof. The policy shall be endorsed to include the District as additional insured.
- c. Automobile Liability insurance, including all owned, non-owned and hired automobiles with the following minimum Bodily Injury and Property Damage-\$300,000.00 Combined Single Limit. The policy shall be endorsed to include the District as an additional insured, in respect to the use of owned, non-owned and hired automobiles by District, its officers, employees and agents in the performance of this Agreement.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under the "Indemnification" section of this Agreement. The "Indemnification" clause shall apply whether or not such insurance policies shall have been determined applicable to any such damage or claims for damages.

**9. No Assignment.** This Agreement is for the personal services of Consultant, and Consultant may not assign the performance of the services to any person or persons who are not parties to this Agreement. Consultant may, at Consultant's sole expense, use Consultant's employees to perform the Services under this Agreement. Consultant is solely and fully responsible for payment of all workers' compensation insurance, unemployment insurance, state and federal taxes, required by law as respects services provided by Consultant and Consultant's employees, under this Agreement.

**10. No Conflict.** Consultant certifies that the compensation paid to Consultant under this Agreement will not conflict with any federal, state or local statutes, rules or regulations, or with any policies of Consultant's current employer, if any.

**11. Consultant Responsible for Taxes, Etc.** Consultant understands and agrees that Consultant hereby assumes all responsibility in relation to providing District with an Employer Identification Number or Social Security Number as required by IRS regulations in relation to the conduct of his or her business. Since Consultant is an independent Consultant, Consultant understands and agrees that Consultant is responsible for paying all required state and federal taxes. Consultant further understands that:

- a. District will not withhold FICA (Social Security) from Consultant's payments;





- b. District will not make state or federal unemployment insurance contributions on behalf of Consultant;
- c. District will not withhold state or federal income tax from payment to Consultant;
- d. District will not make disability insurance contributions on behalf of Consultant;
- e. District will not obtain workers' compensation insurance on behalf of Consultant.

12. **Expenses.** District shall not be held responsible for any expenses besides hourly rate expenses incurred by Consultant in performing the services required by this Agreement, unless first approved in writing by District.

13. **Entirety.** This Agreement constitutes the sole and entire Agreement between the parties hereto regarding the subject matter hereof and shall supersede any and all other agreements between the parties. This Agreement supersedes any prior agreements between District and Consultant, or any other person or entity pertaining to the subject matter hereof, and any and such agreement shall be of no further force of effect as of the date hereof. The parties acknowledge and agree that neither of them has made any representations with respect to the subject matter of this Agreement, or any representation including the execution and delivery hereof except such representations as are specifically set forth herein, and each of the parties hereto acknowledges that such party has relied on such party's own judgment in entering into the same. The parties further acknowledge that any statements or representation that may have been made by either of them prior to the execution of this Agreement are void and of no effect, and that neither of them has relied thereon in connection with any dealings with the other.

14. **Severability.** The provisions of this Agreement are intended to be severable. If any term or provision hereof is found to be illegal or invalid for any reason, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

15. **Waiver.** No provision of this Agreement may be waived or modified unless such waiver or modification is in writing and duly executed by the party to be charged therewith, and that no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties hereto arising out of or affecting this Agreement, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing.

16. **Governing Law.** This Agreement shall be interpreted with and governed by the laws of the State of California. Venue and jurisdiction for any action to enforce or interpret any term of this Agreement shall be in San Luis Obispo County, California.

17. **Binding upon Successors and Assigns.** All covenants, terms, provisions and agreements contained herein shall be binding upon and inure to the benefit of the permitted successors, executors, heirs, representatives, administrators and assigns of the parties hereto.

18. **Use of and Non-Disclosure of Confidential Information.** Consultant agrees to the following: Consultant acknowledges that, in the course of performing services under this Agreement, Consultant will become acquainted with confidential information (herein called "confidential trade information") of District relating to persons, public entities, and businesses with whom District deals or has any contact, all herein referred to as "clients." Such confidential trade information includes, by way of example, but not limited to the identity of all clients and any other parties with whom District deals or



has any contact, or any list thereof, the contents of contracts, reports and correspondence with or regarding all dealings with District's clients, detailed knowledge of the businesses of clients such as by way of example, types of business and methods of doing business, management methods and personal preferences and other characteristics of owners, managers and other employees, financial information concerning clients, and other characteristics, features or data of or concerning District's clients, and all other information concerning District's clients, and all files and other records, and contents thereof of District with respect to its business. Such confidential information, whether in written or recorded form or in the form of general knowledge of Consultant and/or of employees of District, both such information now existing and that which may be obtained in the future, whether received, developed or prepared by Consultant or by any other persons, is and shall remain, both during the term of this Agreement and after any termination hereof, the sole property of District.

**19. Effective Date.** This Agreement is effective on the date last written below. When organizational names are used, the authorized signature must include company title, such as president, and the employer IRS Identification Number must be used instead of a Social Security Number.

Harris Construction Co., Inc.

Paso Robles Joint Unified School District

\_\_\_\_\_  
Michael R. Spencer, President

\_\_\_\_\_  
District's Signature

\_\_\_\_\_  
June 24, 2021  
Date

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
935 Riverside Ave. Suite 9,  
Paso Robles, CA 93446  
Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
(805) 296-3277  
Phone Number

\_\_\_\_\_  
Address

\_\_\_\_\_  
GJames@HarrisConstruction.com  
MDavies@HarrisConstruction.com  
Email

\_\_\_\_\_  
Phone Number



**EXHIBIT A**

**CONSULTANT PERSONNEL RATES**

<b>POSITION</b>	<b>HOURLY RATE</b>
Principal	\$205.00
V.P. Field Operations	\$175.00
Construction Manager	\$140.00
Director of Pre-Construction	\$140.00
Estimator	\$120.00
Scheduler	\$120.00
Support Staff	\$ 85.00

Additional rates available upon request.

\*Rates are inclusive of all expenses for travel and associated administrative content.



## **EXHIBIT B**

### **SCOPE OF WORK and DELIVERABLES**

- Attend weekly meetings either at the jobsite or district office as directed by the District.
- Review and perform schedule analysis
- RFI/Submittal review and provide recommendations
- Review of daily reports for schedule impacts as provided by the district.
- Field walks with the district
- Review of construction issues with District and IOR.
- Cost Review (PCO's)
- Recommend Course of Action as requested by the district.

This Scope of Work is exclusive to Article 1. Duties and Exhibit B. The Scope of Work does not include any items outside of this Agreement.

