

CONSULTANT SERVICES AGREEMENT

This AGREEMENT is made and entered into this 1st day of **March** in the year **2021** ("EFFECTIVE DATE"), between the **La Canada Unified School District**, (hereinafter referred to as "DISTRICT"), and **Linik Corp.**, (hereinafter referred to as "CONSULTANT"). The DISTRICT and the CONSULTANT are sometimes hereinafter referred to as a "PARTY" and collectively as the "PARTIES". This AGREEMENT is made with reference to the following facts:

WHEREAS, the DISTRICT requires services and/or advice of a highly specialized and technical nature in connection with certain financial, consulting and/or administrative matters; and such services and advice are not available within the DISTRICT, and cannot be performed satisfactorily by DISTRICT employees; and

WHEREAS, CONSULTANT possesses the necessary expert knowledge, experience, and ability to perform services not available through DISTRICT personnel; and

WHEREAS, CONSULTANT is specially experienced and competent to provide to the DISTRICT certain specialized services and/or advice in one or more of the foregoing areas; and

WHEREAS, DISTRICT desires to obtain construction management consultation services for the La Canada High School Pool & South Campus Project along with Palm Crest Elementary School Two Story Modular Building, Palm Crest Old District Office Demo Project, Palm Crest ES Interim Housing Project (Install / Removal), Palm Crest ES ADA Barrier/Electrical Upgrades and the Palm Crest ES Modernization of (E) Bldgs.; and

WHEREAS, CONSULTANT has indicated its willingness and commitment to provide its specialized services and/or advice to the DISTRICT on the terms hereafter set forth in this AGREEMENT.

NOW, THEREFORE, the PARTIES hereto agree that the above recitals are true and correct, and further 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 construction management and consultation services as needed for the projects referenced under this agreement, by the DISTRICT.

2. **Contract Term.** The initial Term of this AGREEMENT is for Three Years. The AGREEMENT may be renewed annually at the option of the DISTRICT. In accordance with Education Code section 17596 the total term of this AGREEMENT shall not exceed five (5) years from the date first written above.

ARTICLE II
CONSULTANT'S SERVICES AND RESPONSIBILITIES

1. 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 comply with all prevailing wage laws and requirements as may be applicable to a project.

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.

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, Paragraph 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 the 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 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. The DISTRICT agrees to pay the CONSULTANT the undisputed amounts due under this AGREEMENT.

6. 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 "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 five (5) calendar days.

ARTICLE V ACCOUNTING RECORDS OF THE CONSULTANT

1. Records of the CONSULTANT's direct personnel costs 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 herein for the services performed pursuant to this AGREEMENT. The initial three-year CONTRACT AMOUNT shall not exceed **one million, two hundred-ten thousand, five hundred, seventy five dollars (\$1,210,575) with an additional ten thousand dollars for reimbursables (\$10,000)** without prior written authorization and approval. The following charts summarize the Proposed Project Costs:

6/15/2021 12/31/2022
(On site Supervision/Closeout)

La Canada HS Pool & South Campus Project

<i>Position</i>	<i>Rate</i>	<i>Hrs./Mo</i>	<i># of Mo.</i>	<i>Sub-total</i>
Project Manager (Fuad Motia)	\$135	170	18.5	\$424,575
PX / Schedule (Duane Kronnick)	\$150	8	15	\$18,000
				\$442,575

Palm Crest ES Two Story Modular Building, Palm Crest Old District Office Demo Project, Palm Crest ES Interim Housing Project (Install / Removal), Palm Crest ES ADA Barrier/Electrical Upgrades and the Palm Crest ES Modernization of (E) Bldgs.

4/1/2021 11/30/2023
(On site Supervision/Closeout)

<i>Position</i>	<i>Rate</i>	<i>Hrs./Mo</i>	<i># of Mo.</i>	<i>Sub-total</i>
Project Manager (Frank Navarro)	\$135	170	32	\$734,400
PX / Schedule (Duane Kronnick)	\$150	8	28	\$33,600
				\$768,000
Total Labor Cost				\$1,210,575
Reimbursables				\$10,000

b. CONSULTANT shall invoice costs monthly, or another periodic basis approved by the DISTRICT, 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 as determined by the DISTRICT.

c. Except as expressly provided herein, CONSULTANT agrees that no other compensation, fringe benefits, or other remuneration is due to CONSULTANT by the DISTRICT for services rendered under this AGREEMENT. CONSULTANT shall not apply for or receive statutory benefits available to employees of the DISTRICT because CONSULTANT is not an employee of the DISTRICT; rather, CONSULTANT is operating under a personal services agreement pursuant to Education Code section 45103.1(b)(2) and has only the rights defined by this AGREEMENT.

**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 such services. The DISTRICT may require CONSULTANT to perform additional services which are, in the DISTRICT's discretion, necessary. Compensation for such services shall be negotiated and approved in writing by the DISTRICT.

**ARTICLE VIII
REIMBURSABLE EXPENSES**

1. Reimbursable expenses are in addition to compensation for basic and extra services, and shall be paid to the CONSULTANT at cost for the expenses incurred by the CONSULTANT.

**ARTICLE IX
INDEMNITY & INSURANCE**

1. CONSULTANT shall defend, indemnify, and save and hold harmless DISTRICT, its officers, agents and employees from any claims, suits or actions of every name, kind and description brought forth, or on account of, personal injury or bodily injury (including death) of any person, including (but not limited to) workers and the public, or damage to property, resulting from or arising out of Consultant's negligence or willful misconduct in the performance of this Agreement, save and except those matters arising from District's sole, active negligence or willful misconduct. The parties intend that this provision shall be broadly construed to effectuate its purpose.

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. Comprehensive general and auto liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit, bodily injury and property damage liability per occurrence, including:

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 **two (2) 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 IX, Paragraph 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.

ARTICLE X MISCELLANEOUS

1. 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.

2. 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.

3. 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.

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

5. 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 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 portions describing the CONSULTANT's scope of work, rate and price schedule and qualifications.

6. 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.

7. The rule of construction that any ambiguities are to be resolved against the drafting PARTY shall not be employed in the interpretation of this AGREEMENT. It is expressly understood and agreed that the PARTIES to this AGREEMENT have participated equally, or have had equal opportunity to participate, in the drafting hereof.

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

9. 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.

10. 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 unless otherwise excluded by the terms of this AGREEMENT. In the event that the provisions of any Exhibit conflict with the terms of this AGREEMENT, the terms of this AGREEMENT shall control.

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

12. During the entire term of this AGREEMENT, CONSULTANT, if applicable shall fully comply with the provision of Education Code section 45125.1 (fingerprinting requirements), when it is determined that the CONSULTANT will have contact with DISTRICT pupils in the performance of services under this AGREEMENT.

13. 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.

LINIK CORP.

La Canada Unified School District

By: _____

By: _____

Duane Kronnick

Mark Evans

President / CEO

Associate Superintendent Business Services

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