

Contract #3047/21

**SAN MATEO FOSTER CITY SCHOOL DISTRICT
1410 South Amphlett Blvd., San Mateo, CA 94402**

AGREEMENT FOR PROJECT INSPECTION SERVICES

This Agreement for Project Inspection Services ("Agreement") is made as of the **1st** day of **December** in the year **2021**, by and between the **San Mateo-Foster City School District**, San Mateo, California ("District") and **KGCS Inspection** . ("Inspector"), (together, "Parties").

WHEREAS, the District awarded a contract to a construction contractor to perform work ("Construction Work") at **George Hall Elementary School**; ("Site"); and

WHEREAS, the District has retained the services of **HMC Architects** as the architect and/or design professional of the Construction Work ("Architect"); and

WHEREAS, the Construction Work shall be performed pursuant to District-approved plans, drawings, specifications, and other contract documents ("Contract Documents"); and

WHEREAS, the District requires the services of a Division of the State Architect ("DSA") approved project inspector during the Construction Work; and

WHEREAS, pursuant to Education Code section 17311, the DSA and the Architect have approved the Inspector to be a project inspector on California public school construction projects; and

WHEREAS, the Inspector warrants and represents that he is competent to perform the duties and responsibilities required by this Agreement and by applicable laws and regulations for the inspection of Construction Work at the Site ("Project").

NOW, THEREFORE, the Parties agree as follows:

1. **Inspector as District Representative.** The Inspector shall, as requested by the District, act as the project inspector for the Project. The Inspector shall observe construction operations to insure that the Project is constructed and completed in strict conformity with all applicable laws and regulations and the Contract Documents ("Services").
2. **Scope of Work and Compensation.** The Services include project inspection services for each component as listed below.
 - 2.1. Any one of the components or combination thereof may be changed, including termination, in the same manner as the Services, as indicated herein, without changing in any way the remaining component(s). The provisions of this Agreement shall apply to each component without regard to the status of the remaining component(s). Inspector shall invoice for each component separately and District shall compensate Inspector for each component separately on a proportionate basis based on the level and scope of work completed for each component.
 - 2.2. Inspector's fee for the performance of Services at the above Site shall be a total maximum **Two Hundred and Fifty-nine Thousand Three Hundred Fifty Dollars (\$259,350.00)**. This is for the George Hall New MPR and Support Rooms Project that includes new MPR, support rooms, and site work.
 - 2.3. Unless otherwise arranged by mutual agreement, the first day this Agreement becomes effective shall be the first work day of the first month of Service. The same day of the month shall become the first work day of the second and each successive month of Service.

- 2.4. The Inspector shall submit a monthly itemized statement of Service charges and expenses (if applicable) to the District on the fifth (5th) day of each month. A statement shall be prepared for each Site, if Inspector works at more than one Site. The itemized statement shall reflect all hours spent per workday by the Inspector in performing Services pursuant to this Agreement for the previous month. The District will permit a one (1) month grace period beyond this time for the Inspector to submit its invoice for a particular month's work. No amounts shall be due or owing to the Inspector if it fails to submit an invoice to the District at or before the end of that grace period.
- 2.5. Payment of all undisputed amounts will be due within thirty (30) days of receipt of an invoice.
- 2.6. The daily job log referred to herein shall include a log of time spent by the Inspector in the performance of Services under this Agreement.
3. **Term.** The term of this Agreement shall commence on January 2022 and conclude on August 2023. If project extends past said completion date District shall negotiate additional compensation.
4. **Submittal of Documents.** The Inspector shall not commence the Services under this Agreement until the Inspector has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:
- | | |
|----------------|-------------------------------------------------|
| <u> X </u> | Signed Agreement |
| <u> </u> | Workers' Compensation Certificate |
| <u>On file</u> | Criminal Background Investigation Certification |
| <u>On file</u> | Insurance Certificates and Endorsements |
| <u>On file</u> | W-9 Form |
5. **Expenses.** District shall not be liable to Inspector for any costs or expenses paid or incurred by Inspector in performing Services, except for those set forth in this Agreement. In no event will local telephone calls or local mileage within the County be considered reimbursable expenses.
6. **Standard of Care.** Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of project inspectors of California school districts.
7. **Inspector's Authority**
- 7.1. **Full-Time Inspector Under Direction .** The Inspector shall act as project inspector on a full-time, constant basis, including during off hours, and weekend hours as deemed necessary by the Inspector, the District. The Inspector shall be under the direction is subject to the Supervision of DSA.
- 7.2. **Authority to Reject Construction Work.** The Inspector shall not direct a contractor in the execution of the Construction Work. The Inspector does not have the authority to stop work on the Project. The Inspector shall have the authority to reject defective materials and to suspend any specific Construction Work that is being improperly performed, subject to the ultimate decision of the Architect and the District. The Inspector will have the authority to approve, disapprove, observe, and report matters pertaining to the Construction Work performed on the Project.
- 7.3. **Conflict of Interest.** The Inspector shall not have a financial or investment interest in any person, contractor, entity, or their employees, agents, or subcontractors with responsibilities for the construction of, design of, or other work or duties related to the Project. The Inspector shall not have the authority to assist any person, contractor, entity, or their employees, agents, or subcontractors in the performance of the any work on the Project. The Inspector shall not undertake any responsibilities of any person, contractor, entity, or their employees, agents, or subcontractors. It shall be understood, however, that the Inspector shall make every attempt to remove obstacles preventing the orderly

progress of work on the Project.

8. **On-Site Presence.** The Inspector shall be physically present at each Site at all times necessary for performance of its duties as project inspector. The Inspector shall have personal knowledge of the Construction Work at all stages. The Inspector shall accompany the Architect, the District, the construction manager, or other consultants when any of them are observing the Construction Work. The Inspector shall be physically present for all concrete work and masonry work.
9. **Inspector's General Obligations, Duties, and Responsibilities.** The Inspector shall completely and timely inspect all portions of the Construction Work as it progresses.
 - 9.1. The Inspector shall endeavor to guard the District and the State of California ("State") against apparent defects and deficiencies in the Construction Work and shall act on behalf of the District to see that the Construction Work is executed and completed in a timely manner in accordance with the Contract Documents and applicable laws and regulations.
 - 9.2. The Inspector shall study and fully comprehend the requirements of the Construction Documents in order to provide competent inspection of the Construction Work. The Inspector shall consult the Architect to resolve any uncertainties in the Inspector's comprehension of the plans and specifications. The Inspector shall possess a thorough understanding of the requirements of the plans and specifications for each portion of Construction Work before that portion of Construction Work is performed.
 - 9.3. The Inspector shall identify all non-compliant Construction Work as work on the Project progresses in order to facilitate timely corrective action.
 - 9.4. The Inspector shall verify code-compliant implementation of the materials testing and special inspection program, as applicable, including notification of materials testing labs, the performance of material sampling and special inspections, and the review of all material sampling and special inspection reports. The Inspector shall not be required to conduct tests that are specified in the Contract Documents to be performed by a testing or inspection laboratory or firm.
 - 9.5. Inspector shall comply with all the requirements of a DSA project inspector including, without limitation, all the requirements included and/or referenced.
 - 9.6. The Inspector shall not authorize deviations from the Contract Documents.
10. **Inspector Maintenance of Records, Job File, and Building Codes**
 - 10.1. **Inspection Records.** The Inspector shall maintain detailed, comprehensive, organized, accessible, and timely documentation of all inspections of the Construction Work ("Inspection Records"). The Inspection Records shall identify all compliant and non-compliant Construction Work. The Inspection Records shall include, without limitation:
 - 10.1.1. A systematic record of the inspection of all Construction Work required by the Construction Documents. The Inspector shall perform this by marking properly completed Construction Work on a set of Construction Documents to verify that the requirements of the plans and specifications have been met.
 - 10.1.2. Construction Procedure Records (Title 24, Part 1, Section 4-342(6)) including, without limitation, concrete placement operations, welding operations, pile penetration blow counts, and other records specified on the approved Construction Documents.
 - 10.1.3. The resolution of reported deviations.
 - 10.1.4. Daily job log of the Inspector's time spent on the Site(s).

- 10.2. **Job File.** The Inspector shall maintain a record of his/her attendance on the Site(s) and shall maintain files of schedules, notes, communications, records, documents, and drawings on behalf of the District. The schedules, notes, communications, records, documents, and drawings shall be regularly reviewed with the District, shall be kept in an order as directed by the District (e.g. by date or type of transaction). The Inspector shall assist District staff in preparing quarterly progress reports to the governing board of the District. In addition, the Inspector shall organize and maintain a complete system of construction records, including, but not limited to:

- 10.2.1. All Inspection Records
- 10.2.2. Job memo file.
- 10.2.3. Site conference file.
- 10.2.4. Progress reports.
- 10.2.5. Test and Inspection List
- 10.2.6. Correspondence file, including, without limitation, all correspondence from/to Architect, construction contractor(s), District, and DSA.
- 10.2.7. Complete change order file.
- 10.2.8. All Addenda
- 10.2.9. All deferred approval documents
- 10.2.10. Complete shop drawings, samples, and submittal file.
- 10.2.11. All Contract Documents including, without limitation, the approved plans and specifications.

All these records and all documents kept by the Inspector shall be and remain the property of the District.

- 10.3. **Building Codes.** In addition to the above documents, the Inspector shall keep at the Site(s), a copy of all applicable building codes and regulations necessary to perform required inspections, including, without limitation, the following parts of Title 24 of the California Code of Regulations in the edition referenced in the Contract Documents:

- 10.3.1. Title 24, Part 1 (Administrative Code)
- 10.3.2. Title 24, Part 2, Volumes 1, 2, and 3 (Building Code)
- 10.3.3. Title 24, Part 3 (Electrical Code)
- 10.3.4. Title 24, Part 4 (Mechanical Code)
- 10.3.5. Title 24, Part 5 (Plumbing Code)
- 10.3.6. Title 24, Part 6 (Energy Code)

11. Communications, Reporting, and Notifications

- 11.1. **DSA Notification.** The Inspector shall notify DSA:

- 11.1.1. At least forty-eight (48) hours prior to the start of any Construction Work at each Site.
- 11.1.2. At least forty-eight (48) hours prior to completion of any foundation excavations/trenches.
- 11.1.3. At least forty-eight (48) hours prior to the first concrete pour/placement at any Site.
- 11.1.4. When Construction Work has been suspended for a period of more than two (2) weeks.

- 11.2. **Notification of District and Architect.** The Inspector shall immediately report to the District, the Architect, and the construction manager any failure by any contractor or subcontractor to comply with the Contract Documents, or any attempted substitutions of required materials and/or workmanship in any portion of the Construction Work. The Inspector shall inform the District, the Architect, and the construction manager of any conflicts, ambiguity, and/or inconsistencies in the Contract Documents and of any interpretations, suggestions, comments, and/or criticisms the Inspector has related to the Project or the Contract Documents. The Inspector shall advise the District of needed inspections related to the status of the Construction Work, and the District shall provide the schedule of Construction Work to the Inspector so that both Parties arrange timely inspections.

- 11.3. **Deviation Notification of Contractor(s).** The Inspector shall notify a contractor verbally and in writing of any deviations from the approved Contract Documents by that contractor or its subcontractors. If the contractor does not immediately correct the deviation upon the verbal notice, then copies of the written notice shall be forwarded immediately to the District, the Architect, the construction manager, and DSA. The Inspector shall document all resolutions of reported deviations and make them part of the Inspection Records.
- 11.4. **Contractor Inquiries.** Contractors are expected to direct inquiries regarding Construction Document interpretation to the Architect through the Inspector, including the contractor's uncertainties regarding the Construction Documents. The Inspector shall document these inquiries and immediately forward them to the Architect for response.
- 11.5. **Construction Manager.** The Inspector shall also work with the construction manager if the District uses a construction manager on any portion of the Project. If the District does not use a construction manager on the Project, then all references to a construction manager herein shall mean the District.

12. Inspector Responsibilities for Forms and Reports

- 12.1. **Semi-Monthly Reports.** The Inspector shall submit semi-monthly reports on the 1st and the 15th of each month to the District, the Architect, and DSA.
- 12.2. **Verified Reports.** The Inspector shall submit verified reports at the following times that will include notification of outstanding deviations:
 - 12.2.1. Work on the Project(s) is suspended for a period of more than one (1) month.
 - 12.2.2. The Inspector is terminated for any reason.
 - 12.2.3. DSA requests a verified report.
 - 12.2.4. If the District occupies any building on the Site(s).
 - 12.2.5. When the Construction Work is complete.

Each verified report shall be on Form DSA-6, or more current form, and shall clearly describe all non-compliant Construction Work including change order work that is pending DSA approval. Each verified report shall state that the Inspector knows of his/her personal knowledge that the Construction Work has, in every material respect, been performed in compliance with the Construction Documents. The Inspector shall declare under penalty of perjury that all information indicated on the report is true.

- 12.3. **All Other Reports.** In addition, the Inspector shall initiate and file with DSA prior to their due date, any other Project-related, forms, required of contractors, subcontractors, testing and inspection laboratories, and the District. The Inspector shall prepare and forward to the District, Architect, and DSA all other reports required by Title 24 of the California Code of Regulations, the State, and/or DSA.
- 13. **Inspector Responsibilities for Laboratory Structural Tests.** The Inspector shall initiate and expedite testing by independent test laboratories and shall maintain all necessary back up information for special inspection invoice processing, and shall be responsible for the sequential progress of the Project related to the test lab reports.
 - 14. **Inspector Responsibilities at Beginning of Occupancy.** The Inspector shall observe the District's occupancy or movement of District-furnished equipment to each Site before completion and record and report any damages occurring so any claims may be fully documented.
 - 15. **Compliance With Applicable Laws.** The Inspector shall conform to the following specific rules and regulations as well as all other applicable laws, ordinances, rules, and regulations. Nothing in the drawings, plans and specifications is to be construed to permit Construction Work not conforming to these codes.

- 15.1. California Code of Regulations, Title 24, including amendments, in the edition referenced in the Contract Documents.
- 15.2. Regulations of the State Fire Marshall (Title 19, California Code of Regulations) and applicable local fire safety codes.
- 15.3. Labor Code of the State of California - Division 2, Part 7, Public Works and Public Agencies.
- 15.4. Education Code of the State of California
- 15.5. Industrial Accident Commission's Safety Orders, State of California.
- 15.6. National Electrical Safety Code, U. S. Department of Commerce.
- 15.7. National Board of Fire Underwriters' Regulations.
- 15.8. Manual of Accident Prevention in Construction, latest edition, published by the American General Contractors of America.

The Inspector certifies that it is aware of the provisions of California Labor Code, the California Code of Regulations, and/or precedential decisions of the California Department of Industrial Relations and/or any of its subsidiary divisions that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Since the Contractor is performing Services as part of an applicable "public works" or "maintenance" project, and since the total compensation is \$1,000 or more, the Contractor agrees to fully comply with and to require its consultant(s) to fully comply with all applicable Prevailing Wage Laws.

16. **Extended Services.** The Inspector shall provide additional extended Services for the Project made necessary by Construction Work damaged by fire or other Acts of God during construction, or prolongation of the initial construction contract time beyond the construction contract time schedule.
17. **Inspector Certification.** The Inspector shall provide the District a copy of documents satisfactory to the District certifying that the Inspector holds proper state certification and approval by DSA to perform the required Services for this Agreement. The Inspector shall also provide any other documents or certification requested by the District. The Inspector shall initiate and provide the District with Form DSA-5, or more current qualification/certification form.
18. **Substitute Inspector and/or Assistant Inspector.** The Inspector shall provide the Services throughout the term of this Agreement, and shall not delegate its duties without the full knowledge and prior written consent of the District. In the event of the Inspector's absence for more than two (2) consecutive days or unavailability for scheduled inspections, the Inspector, at no cost to the District, shall secure a substitute inspector and/or assistant inspector who shall be appropriately certified, approved by DSA, and pre-approved in writing by the District, to perform the Services. Certification documents for the approved substitute inspector(s) and/or assistant inspector(s) shall be presented to the District within thirty (30) working days after the date of this Agreement. All substitute inspector(s) and assistant inspector(s) shall be obligated to perform the Services while performing any work on the Project. The Inspector shall provide technical guidance and monitoring of all substitute inspector(s) and assistant inspector(s).
19. **Other Jobs Outside of the Project.** The Inspector shall be required to work full-time on the Project, and shall not work on or be under contract for another project without prior written approval from the District, and without a reduction in compensation proportionate to the amount of time Inspector is required to be absent for responsibilities to another project.
 - 19.1. In the event that this Agreement involves a company of inspectors, a DSA-approved inspector shall be designated as the Inspector for the District, and shall be on constant duty at each Site as described in this Agreement.
 - 19.2. The Inspector shall have the right to request and obtain an uncompensated release for a reasonable amount of time to fulfill unavoidable duties on other incomplete projects in progress at the beginning of the Project.
20. **District's Evaluation of Inspector and Inspector's Employees and/or Subcontractors.** The District may

evaluate the Inspector in any manner which is permissible under the law. The District's evaluation may include, without limitation:

- 20.1. Requesting that District employee(s) evaluate the Inspector and the Inspector's employees and subcontractors and each of their performance.
 - 20.2. Announced and unannounced observance of Inspector, Inspector's employee(s), and/or subcontractor(s).
21. **Confidentiality.** The Inspector and all personnel designated by the Inspector to perform under this Agreement shall maintain the confidentiality of all information received in the course of performing any work pursuant to this Agreement. This requirement to maintain confidentiality shall extend beyond the effective termination date of the Agreement.
22. **Independent Contractor.** The Inspector shall act as an independent contractor and shall not be an employee, officer, agent, partner, or joint venture of the District by virtue of this Agreement. Inspector shall not earn or be 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. Nothing in this Agreement shall be construed to mean that the District retains any control over the manner and means of how the Inspector performs its duties and responsibilities under this Agreement, but only as to the results of the Services. It is understood that no deductions will be made from payments to the Inspector on account of withholding for income tax, Social Security, health insurance, retirement, or any other benefits applicable to employees of the District. Inspector 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 Inspector's employees.
23. **Employment With Public Agency.** Inspector, if an employee of another public agency, agrees that Inspector 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.
24. **Non-Assignment.** This Agreement is a personal services agreement. Inspector shall not assign this Agreement or any portion of it voluntarily to any third party without the prior written consent of the District, and any purported assignment without prior written consent of the District shall automatically terminate this Agreement.
25. **Termination**
- 25.1. **Job Completion.** Unless previously terminated or otherwise cancelled, this Agreement shall terminate when the notice of completion for the Project is recorded with the County recorder.
 - 25.2. **Termination For Convenience**
 - 25.2.1. The District may terminate this Agreement by written notification seven (7) days prior to the effective date of the termination.
 - 25.2.2. The Inspector may terminate this Agreement by written notification forty-five (45) days prior to the effective date of the termination. Inspector acknowledges that this forty-five (45) day notice period is acceptable so that the District can attempt to procure inspection services from another source.
 - 25.2.3. Neither party shall be required to provide just cause for termination in the written notification. The Inspector and the District shall notify DSA upon the termination of this Agreement.
 - 25.3. **Termination for Cause.** District may terminate this Agreement immediately for cause. Cause shall include, without limitation:

- 25.3.1. Material violation of this Agreement by the Inspector; or
- 25.3.2. Any act by Inspector exposing the District to liability to others for personal injury or property damage; or
- 25.3.3. Inspector is adjudged bankrupt, Inspector makes a general assignment for the benefit of creditors or a receiver is appointed on account of Inspector's insolvency.
- 25.3.4. In the event of a termination for cause, the District may secure the required services from another project inspector. If the expense, fees, and/or costs to the District exceeds the cost of providing the service pursuant to this Agreement, the Inspector shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.
- 25.4. **Documentation Upon Termination.** Upon termination, Inspector shall provide the District with all documents produced maintained or collected by Inspector pursuant to this Agreement, whether or not such documents are final or draft documents.
26. **Indemnification.** To the furthest extent permitted by California law, Inspector shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, Inspectors, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim"), to property or persons, including personal injury and/or death, to the extent that any of the above arise out of, pertain to, or relate to the negligence, recklessness, errors or omissions, or willful misconduct of Inspector, its officials, officers, employees, subcontractors, Inspectors, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement, including without limitation the payment of all consequential damages.
27. **Insurance**
- 27.1. The Inspector shall procure and maintain during the life of the Project the following insurance with minimum limits equal to the amount indicated below.
- 27.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Inspector, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from any portion of the Services.
- 27.1.2. **Workers' Compensation and Employers' Liability Insurance.** In accordance with provisions of section 3700 of the California Labor Code, the Inspector shall be required to secure workers' compensation coverage for its employees. In addition, the Inspector shall provide Employers' Liability Insurance for all of its employees engaged in any work on the Project. If any class of employee or employees engaged in work under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence work under this Agreement.
- 27.1.3. **Professional Liability (Errors and Omissions).** Insurance as appropriate to the Inspector's profession.

Type of Coverage	Minimum Requirement
------------------	---------------------

Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
Automobile Liability Insurance - Any Auto	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
Professional Liability	\$ 1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

27.2. **Proof of Carriage of Insurance.** The Inspector shall not commence any work under this Agreement until all required insurance has been obtained and certificates indicating the required coverages have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

27.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

27.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

27.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Inspector's insurance policies shall be primary to any insurance or self-insurance maintained by District.

27.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

27.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

28. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

District:

San Mateo Foster City School District
1410 South Amphlett Blvd.
San Mateo, CA 94402
ATTN: Mark Sherrill, Construction Project
Manager

Inspector

Name: Kory Gilbert
Address: P.O Box 578903
Modesto, CA 95357

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

29. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed in connection with this Agreement.
30. **Fingerprinting.** The Inspector shall comply with the provisions of Education Code section 45125.01 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Inspector shall not permit any employee to have any contact with District pupils until such time as the Inspector has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Inspector's responsibility shall extend to all employees, substitute inspectors, agents, and employees or agents of substitute inspectors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent inspectors of the Inspector. Verification of compliance with this section and the Criminal Background Investigation Certification shall be provided in writing to the District prior to each individual's commencement of employment or participation on the Project and prior to permitting contact with any student.
31. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Inspector must submit, upon request by District, appropriate documentation to the District identifying the steps the Inspector has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
32. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.
33. **Incorporation of RFQ/RFP & Proposal and Interpretation of Documents.** If the Parties enter into this Agreement as a result of a Request for Qualifications and/or a Request for Proposal ("RFQ/RFP"), the RFQ/RFP and the Inspector's proposal are hereby incorporated into this Agreement. If a conflict exists between this Agreement and the RFQ/RFP and/or the Inspector's Proposal, this Agreement shall control over the RFQ/RFP, which shall control over the Inspector's Proposal. In no case shall a document calling for lower quality material or workmanship control.
34. **Integration/Extent of Agreement.** This Agreement represents the entire and integrated contract between the District and the Inspector, and supersedes all prior understandings, negotiations, representations, or agreements, either written or oral, unless specifically incorporated into this Agreement. Addenda shall be included only with the written approval of both the District and the Inspector. The headings of the paragraphs are for convenience only and are not a part of this Agreement and shall not be considered in construing the intent of this Agreement.
35. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
36. **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.
37. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under this Agreement there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Inspector agrees to comply with applicable Federal and California

laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Inspector agrees to require like compliance by all its subcontractor(s).

38. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2021

San Mateo-Foster City School District

By: _____

Print Name: Patrick Gaffney

Print Title: Chief Business Official

Dated: 12/8/2021, 2021

KGCS Inspection

By: _____

Print Name: Kory Gilbert

Print Title: DSA Cert. 3862

DocuSigned by:

Kory Gilbert

D7445EC353A2490...

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides:

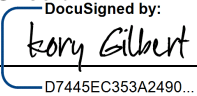
Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

Date: 12/8/2021

Proper Name of Inspector: Kory Gilbert

Signature:  D7445EC353A2490...

Print Name: Kory Gilbert

Title: DSA Cert. 3862

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Work under this Contract.)

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Independent Consultant Agreement for Professional Services ("Agreement"):

X Consultant's employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Consultant's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Consultant for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 (c))

Date: December 1, 2021

District Representative's Name and Title: Mark Sherrill, Construction Project Manager

Signature: _____

☐ The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Consultant's services under this Agreement and Consultant certifies its compliance with these provisions as follows: *"Consultant certifies that the Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Consultant's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant, who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto."*

☐ Consultant's services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:

_____ The installation of a physical barrier at the worksite to limit contact with pupils.

_____ Continual supervision and monitoring of all Consultant's on-site employees of Consultant by an employee of Consultant, _____, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

_____ Surveillance of Employees by District personnel.

Date: _____

District Representative's Name and Title: Mark Sherrill, Construction Project Manager

Signature: _____

I am a representative of the Consultant entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant.

Date: _____

Name of Consultant or Company: _____

Signature: _____

Print Name and Title: _____

12/8/2021

Kory Gilbert Inspector

Kory Gilbert

Project Inspector

D7445EC353A2490...