



SAN MATEO-FOSTER CITY SCHOOL DISTRICT

Facilities Department | 1170 Chess Drive, Foster City, California 94404 | 650.312.7889 Tel

STANDARD AGREEMENT – Contract #3091/21

THIS AGREEMENT, made and entered into this 28th day of February, 2022 in the State of California, County of San Mateo, by and between the San Mateo - Foster City School District located at 1170 Chess Drive, Foster City, CA 94404, hereafter referred to as District, and Vista Environmental Consulting, Inc. located at 2984 Teagarden Street, San Leandro, CA 94577, hereafter referred to as Consultant.

WITNESSETH: That Consultant for and in consideration of the covenants, conditions, agreements and stipulations of District hereinafter expressed, does hereby agree to furnish to District services and/or materials, as follows:
Labor, material, and equipment to perform the following at Bowditch Middle School:

A comprehensive survey, including access and sampling of the roofing materials, will be accomplished for the following buildings: D, E, F, G, H, I, & J and connecting walkways.

A limited survey, not including access and sampling of the roofing materials will be completed for the following buildings: A, B, C, K, L, M, & O and connecting walkways.

SCOPE OF SERVICES

1. Asbestos, Lead & Universal Waste Surveys

A combination of comprehensive and limited surveys for asbestos, lead and universal wastes will be performed. The surveys will be performed in adherence with applicable federal, state and local regulations. Consultant will visually inspect all accessible structural, architectural and mechanical systems in the path of construction for the presence of these materials.

a. Asbestos assessment will include the collection of an estimated 500 asbestos samples. Samples will be submitted to an accredited laboratory and analyzed by Polarized Light Microscopy with a 3 day turnaround time.

b. Lead assessment will include the use of an XRF direct reading instrument to collect measurements of representative painted and coated surfaces for evaluation of lead levels prior to construction activities. This will not be a surface by surface inspection as outlined in the U.S. Department of Housing and Urban Development (HUD) *Guidelines For the Evaluation and Control of Lead-Based Paint Hazards in Housing* pursuant to Title X of the Housing and Community Development Act of 1992.

c. Consultant will conduct a visual assessment to identify other potential regulated materials or environmental hazards in the path of construction. This visual assessment will include identifying items that could contain PCBs, such as ballasts and de-energized transformers. Sealants and energized electrical equipment, including transformers, are excluded. Universal Waste materials such as non-incandescent lamps and batteries, mechanical devices that contain coolant gases such as water fountains and HVAC systems, and devices that could contain low-levels of radiation such as smoke detectors and exit signs. No samples will be taken of these materials.

1170 Chess Drive
Foster City, California 94404
650.312.7700 Tel
650.312.7779 Fax
www.smfcisd.net

Board of Trustees
Kenneth Chin, Noelia Corzo, Rebecca Hitchcock, Lisa Warren, Shara Watkins

Superintendent
Diego Ochoa

Contract #3091/21 (continued)

d. Deliverables include a hazardous materials survey report. The report will include analytical results and field drawings and will be provided in electronic (PDF) format.

e. The assessment is limited to the identified areas of construction themselves. No investigation of the soil for any contaminant will be performed. No underground investigation will be performed during the survey. If consultant notices evidence of a problem adjacent to the project site it will make mention of said condition in the report of findings. Consultant takes no responsibility for hazardous materials found outside the scope of services. Demolition of finishes shall not be accomplished as part of this scope of services.

In consideration of the above services and/or materials, the District agrees to pay to the Consultant **Forty-four Thousand Four Hundred Ninety-eight Dollars and no cents (\$44,498.00)**, upon completion of the work, delivery and receipt of invoice, except for any amounts the District disputes as owed.

The Consultant shall completed the Work by: **April 22, 2022**

Submittal of Documents. The Consultant shall not commence the Work under this Contract until the Consultant 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 Agreements	<u>Updated</u>	Workers' Compensation Certificate
<u>Updated</u>	Insurance Certificates & Endorsements	<u>On file</u>	W-9 Form
<u> N/A </u>	Bonds (as requested by District)	<u> X </u>	Other: <u>COVID vaccination form</u>

The provisions on the following page hereof, entitled **Terms and Conditions** constitute a part of this Agreement.

Contract #3091/21 (continued)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

DISTRICT

San Mateo - Foster City School District
Facilities Department
1170 Chess Drive
Foster City, CA 94404
Main: (650) 312-7889
Fax: (650) 655-3388

DocuSigned by:

Patrick K Gaffney

3/2/2022

Authorized Signature

Date

Patrick Gaffney, CBO

Print Name

DS

AK

CONSULTANT

DocuSigned by:

Mike Legerski

3/1/2022

Authorized Signature

Date

Mike Legerski

Printed Name

Principal

Title

Vista Environmental Consulting, Inc.

Company Name

Terms and Conditions

1. Definitions: “Work” or “Services”: All work and services that the Consultant must perform pursuant to this PO. “Site”: The site(s) at which the Work must be performed. “Parties”: The District and the Consultant.

2. Site Examination: Consultant has examined the Site and (1) accepts all measurements, specifications and conditions affecting the Work to be performed and (2) warrants that it has examined the Site to the extent it deems necessary for accessibility for materials, workers and utilities, and for protection of existing surface and subsurface improvements. No claim as to undiscovered conditions on the Site will be allowed.

3. Equipment & Labor: Consultant shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material to perform the Work at the times and places directed by and approved by District.

4. SubConsultants: District reserves the right to approve any subConsultants engaged for any Work. Consultant agrees to bind every subConsultant by the terms of the PO, including, without limitation, indemnification, insurance, and warranty requirements. If Consultant subcontracts any of the Work or Contract, Consultant shall be fully responsible to District for Work of its subConsultants and persons directly or indirectly employed by them. The Contract shall not create any contractual relations between any subConsultant and District.

5. Termination: District may terminate the Contract immediately upon District’s written notice to Consultant. Termination shall not affect the rights and obligations of the Parties arising prior to the effective date of termination.

6. Change in Scope of Work: District shall not accept any change in the scope of Work, performance method, materials, price, or any other matter affecting the Work unless District approves the change in advance by a written, executed change order. Consultant agrees that District may request changes, reductions, or additions to the Work. The Contract Price shall be adjusted by reasonable valuations of the cost. Consultant shall provide District with all information to substantiate the cost whether the Work will be done by Consultant or a subConsultant. Prior to approval of a change order, Consultant shall submit any request for a time extension, and all information substantiating its claim for delay. If Consultant fails to submit a time extension request or all supporting information, it shall have waived any extension.

7. Trench Shoring: If a Contract for the excavation of a trench deeper than five (5) feet exceeds \$25,000, Consultant shall obtain District’s prior acceptance of a detailed plan for shoring, bracing, sloping, or other plans for worker protection from caving. The plan shall be prepared by a registered civil or structural engineer if it varies from shoring system standards.

8. Excavations Over 4 Feet: If the Contract includes excavations over four (4) feet, Consultant shall, before the conditions are disturbed, notify District, in writing, of any: (1) Material that may be hazardous waste, as defined in Health & Safety Code, § 25117 that must be removed to a Class I, II, or III disposal site in accordance with existing law; (2) Subsurface or latent physical site conditions differing from those indicated; or (3) Unknown or unusual site conditions. After receipt of Consultant’s notice, District shall investigate the conditions, and may issue a change order under the Contract procedures. A District and Consultant dispute as to whether the conditions differ materially, involve hazardous waste, or cause a change in Consultant’s cost or time to perform the Work shall not excuse Consultant from a Contract completion date. Consultant shall proceed with all Work. Consultant shall retain any rights from Contract or law regarding dispute resolution.

9. Workers: Consultant shall enforce discipline and order among employees on the Work and shall not employ any person who is unfit or unskilled in assigned work. Consultant shall dismiss and not reemploy any person whom District deems incompetent or unfit.

10. Correction of Errors: Consultant shall perform, at its own cost, without reimbursement from the District, any work necessary to correct errors or omissions caused by Consultant’s failure to comply with the standard of care required herein.

11. Substitutions: No substitutions of material shall be made without District’s prior written approval.

12. Consultant Supervision: Consultant shall provide competent supervision of personnel on the Work Site and of equipment use.

13. Clean Up: Consultant shall remove debris. Consultant shall keep the Site in order at all times when Work is being performed and shall maintain the Site in a reasonably clean condition.

14. Access to Work: Consultant shall provide District safe and proper access to all Work at all times.

15. Safety; Protection of Work & Property: Consultant shall maintain safety in the performance of the Work and shall erect and maintain, as required by conditions and progress of Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of Work or property, Consultant may act to prevent loss or injury. Consultant shall ascertain from District all rules and regulations about safety, security, and driving on school grounds.

16. Assignment of Contract: Consultant shall not assign or transfer any of its rights, burdens, duties, or obligations under the Contract without District’s prior written consent.

17. Time is of the Essence: Time is of the essence in each Contract provision and condition.

18. Occupancy: District may occupy buildings before Contract completion and occupancy shall not constitute acceptance of any Work, nor shall occupancy extend the Contract completion date.

19. Indemnification: To the fullest extent permitted by California law, Consultant shall defend, indemnify, and hold harmless District, its agents, representatives, officers, consultants, employees, and volunteers (“indemnified parties”) from any and all demands, losses, liabilities, claims, suits, and actions (“Claims”) of any kind, nature, and description, including, but not limited to, attorneys’ fees and costs, directly or indirectly arising from personal or bodily injuries, death, property damage, or otherwise arising out of, connected with, or resulting from performance of the Contract unless Claims are caused wholly by the sole negligence or willful misconduct of indemnified parties. District may reject any legal representation that Consultant proposes to defend District.

20. Payment: Unless otherwise specified, Consultant shall submit an invoice for materials or Work under the Contract. District shall make payment for materials, supplies or Work in a lump sum within thirty (30) days of: (1) completion of Work, and (2) delivery to and approval by authorized District agents of all invoices and evidence required by District. District may deduct from payment amounts to protect District from loss because of: (1) liquidated damages as of date of payment application; (2) sums spent by District performing Consultant’s obligations; (3) defective Work not remedied; (4) stop notices; (5) doubt that the Work can be completed for the unpaid Contract balance or by the scheduled completion date; (6) unsatisfactory Consultant Work (7) unauthorized deviations from Contract; (8) Consultant failure to maintain or submit timely, sufficient documentation; (9) false estimates of the value of Work performed; (10) expenses, losses, or damages, determined and incurred by District for which Consultant is liable under the Contract; and (11) any other sums which District may recover from Consultant under the Contract or state law, including Labor Code § 1727. District’s failure to deduct from a progress payment shall not waive District’s right to such sums. District shall retain 10% from all payments as retention for PO’s/contracts in excess of \$25,000. Retention shall be paid pursuant to Public Contract Code §§ 7107 and 7200.

21. Permits & Licenses: Consultant and its employees, agents, and subConsultants shall maintain in force, at Consultant’s sole cost, all licenses and permits required for furnishing the materials, supplies, or Work.

22. Independent Consultant Status: While carrying out the Work, Consultant is an independent Consultant, and not an officer, employee, agent, partner, or joint venture of District. Consultant is solely responsible for its Worker’s Compensation insurance, taxes, and similar obligations. Consultant is liable for its actions, including negligence, gross negligence, and acts or omissions of its agents or employees.

23. Anti-Discrimination: In connection with any District Contracts, there shall be no discrimination against any employee because of race, color, ancestry, national origin, religious creed, or sexual orientation.

Consultant agrees to comply with applicable laws including, but not limited to the California Fair Employment Practice Act (Gov. Code, § 12900 et seq.) and Labor Code § 1735. Consultant shall require like compliance by all subConsultant(s).

24. Warranty/Quality: Unless specified otherwise, Consultant, manufacturer, or their assigned agents shall guarantee workmanship, products or Work against defects or failures for a minimum of one (1) year from filing of Notice of Completion or acceptance of work by final payment or other written form. All Work shall be performed to the standard of care of entities performing similar work for California school districts in or around the same geographic area of the District and all workmanship and merchandise must comply with California energy, conservation, environmental, and educational standards.

25. Compliance with Laws: Consultant shall give all notices and comply with all laws, ordinances, rules and regulations concerning the Work (“Laws”). If Consultant observes that any Work varies from any Laws, Consultant shall notify District, in writing, and, at District’s sole option, any necessary changes to the scope of Work shall be made by written change order, or the Contract shall be terminated upon Consultant’s receipt of District’s written termination notice. If Consultant performs any work that is in violation of Laws, without first notifying District, Consultant shall bear all costs.

26. Disputes: In the event of a dispute between the parties as to performance of Work, Contract interpretation, or payment, the parties shall attempt to resolve the dispute by procedures in Public Contract Code § 20104, et seq., if applicable. Pending resolution of the dispute, Consultant shall neither rescind the Contract nor stop Work. All claims of over \$375,000 may be determined by mediation if mutually agreeable or by litigation. Written notice of demand for arbitration shall be filed with the other party to the Contract. A demand for arbitration shall be made within ninety (90) days after written notice, and before Consultant’s request for final payment.

27. Anti-Trust Claim: Consultant and its subConsultant(s) assign to District all rights, title, and interest to all causes of action under § 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to a contract or subcontract. This assignment shall become effective when District tenders final payment to Consultant, without further acknowledgment.

28. Governing Law: The Contract shall be governed by and construed in accordance with California laws with venue in the District’s County.

29. Provisions Required by Law Deemed Inserted: Every provision required by law to be in the Contract shall be deemed to be inserted and the Contract shall be read and enforced as though included.

30. Binding Contract: The Contract shall be binding upon the parties and their successors and assigns, and inure to the benefit of the parties, successors and assigns.

31. District Waiver: District’s waiver of any term, condition, covenant (term) or of a breach of any term shall not constitute waiver of any other term or of a breach of any other term.

32. Invalid Term: If a Court determined any Contract term to be illegal, invalid or unenforceable (illegal), the legality of the remaining terms shall not be affected, and the illegal term will not be part of the Contract.

33. Entire Contract: This PO and the documents expressly incorporated herein set forth the entire contract between the parties and supersedes all prior agreements or understandings between the parties concerning the subject of this PO. The Contract may only be modified in writing by mutual consent.

34. Consultant’s Insurance: Consultant has in force, and throughout the Work shall maintain with the minimum limits, the following insurance: Commercial General Liability insurance: \$1,000,000 for each occurrence and \$2,000,000 general aggregate with Products and Completed Operations Coverage; Automobile Liability – Any Auto: combined single limit of \$1,000,000; Excess Liability insurance: \$4,000,000; Workers Compensation: Statutory limits; and Employers’ Liability: \$1,000,000. Consultant shall provide District certificate(s) of insurance and endorsements satisfactory to District. Policy(ies) shall not be modified or terminated and coverage amounts shall not be reduced without thirty (30) days written notice to District. Except for worker’s compensation insurance, District, Architect, and the Project Manager (if applicable) shall be named as additional insured on all policies. Consultant’s policy(ies) shall be primary; insurance carried by District shall be secondary. Consultant shall not allow any subConsultant, employee, or agent to commence Work until required insurance has been obtained.

35. Deliveries. The delivery of all materials, equipment, supplies, or other items related to the Work shall be (1) part of the Contract Price; (2) delivered by Consultant at no additional cost to the District, (3) accompanied by all necessary MSDS(s).

CERTIFICATES:

36. Fingerprinting: Consultant shall meet applicable fingerprinting and criminal background investigation requirements of Education Code sections 45125.1 or 45125.2. **Consultant shall execute an applicable Fingerprinting/Criminal Background Investigation Certification.**

37. Lead-Based Paint: Pursuant to the Lead-Safe Schools Protection Act (Ed. Code, § 32240 et seq.) and other applicable law, Consultant shall not use lead-based paint, lead plumbing and solders, or other lead sources, and only trained, state-certified Consultants, inspectors and workers shall undertake action to abate existing lead risk factors. **Consultant shall execute an applicable Lead-Based Paint Certification.**

38. Disabled Veteran Business Enterprises: Education Code § 17076.11 requires that school districts using California School Facility Program funds (SFP Funds) have a disabled veteran business enterprises (DVBE) participation goal of at least 3%. **If the District notifies Consultant prior to PO execution, Consultant must submit to District evidence of its efforts to solicit DVBE participation in the Work.**

THE FOLLOWING PROVISION(S) ARE ONLY APPLICABLE TO POs FOR PUBLIC WORK PROJECTS (I.E., CONSTRUCTION):

1. Payment & Performance Bonds: Consultant shall not commence Work until it has provided to District, in an acceptable form, a Payment (Labor and Material) Bond (for contracts in excess of \$25,000 and/or as specified in Notice to Bidders or bid/quote request) and a Performance Bond (as specified in Notice to Bidders or bid/quote request), each in an amount equivalent to 100% of the Contract Price issued by a surety admitted to issue bonds in California.

2. Certified Payroll Records: Consultant and subConsultant(s) shall keep accurate certified payroll records, and shall comply with all legal requirements for furnishing them to the DIR, and to make them available to District upon request.

3. Labor Code Requirements: Consultant shall comply with California Labor Code, Division 3, Part 7, Chapter 1, Articles 1-5, including payment of prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000). California Department of Industrial Relations has copies of prevailing rates of per diem wages. Consultant and subConsultants shall comply with Chapter 1 of Division 2, Part 7 of the Labor Code, beginning with § 1720, and including §§ 1725.5, 1735, 1777.5 and 1777.6, forbidding discrimination, and §§ 1776, 1777.5 and 1777.6 concerning employment of apprentices by Consultant and subConsultants. Failure to comply may result in penalties.

COVID-19 VACCINATION CERTIFICATION

Consistent with California Department of Public Health (CDPH) guidance, the District currently requires that all permittees, contract workers, and other non-District employees who will be physically present on District premises pursuant to an agreement with the District certify have been fully vaccinated against COVID-19 or submit to regular COVID-19 testing. Consultant is responsible for maintaining a log of all of its employees performing work under the Agreement that indicates each employee's vaccination status ("Vaccination Log"), collecting proof of vaccination for all such employees, and ensuring that any unvaccinated employees submit to weekly COVID-19 testing. Any unvaccinated employees who receive a positive test result will not be permitted on any District site until they have fully quarantined in compliance with all CDC and CDPH guidance. The District retains the right, upon request, to receive a copy of the Vaccination Log, proof of vaccination for any employee(s), and/or records of testing for any unvaccinated employee(s).

Consultant is responsible for maintaining proof of vaccination in any of the following forms:

- (1) COVID-19 Vaccination Record Card (issued by the Department of Health and Human Services Centers for Disease Control & Prevention or WHO Yellow Card) which includes name of person vaccinated, type of vaccine provided and date last dose administered;
- (2) a photo of a Vaccination Record Card as a separate document;
- (3) a photo of the Vaccination Record Card stored on a phone or electronic device;
- (4) documentation of COVID-19 vaccination from a health care provider; OR
- (5) documentation of vaccination from other contracted employers who follow these vaccination records guidelines and standards.

Please certify acknowledgment and compliance by checking the boxes below:

- ☐ Permittee/Consultant hereby certifies that it retains a complete Vaccination Log for all of its employees who may perform any work under this Agreement.
- ☐ Permittee/Consultant has collected proof of COVID-19 vaccination for all fully vaccinated employees and will provide such proof to the District upon request.
- ☐ Permittee/Consultant certifies that all unvaccinated employees who may perform work under this Agreement undergo weekly COVID-19 testing and certifies that it will notify the District if any such employee receives a positive test result.

The District reserves the right to terminate this Agreement immediately upon discovery that any of Permittee/Consultant's personnel who enter District property under the terms of this Agreement are not vaccinated.

DocuSigned by:
 Consultant signature: Mike Legerski Date: 3/1/2022
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