



**SAN MATEO-FOSTER CITY  
SCHOOL DISTRICT**

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

**STANDARD AGREEMENT – Contract #3140/22**

**THIS AGREEMENT, made and entered into this 1<sup>st</sup> day of June, 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 Cleary Consultants, Inc. located at 560 Division St., CA 95008, hereafter referred to as “Consulting”.**

WITNESSETH: That Contractor 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:

**Scope of work:** To do Geotechnical investigations and soils testing and reports for multi-sites. Audubon, Brewer Island, Bayside Academy, Fiesta Gardens, and George Hall Elementary Schools.

In consideration of the above services and/or materials, the District agrees to pay to the Contractor **Sixty-six Thousand Two Hundred Dollars &<sup>00</sup>/<sub>xx</sub> (\$66,200.00)**, upon completion of the work, delivery and receipt of invoice, except for any amounts the District disputes as owed.

Time for Completion of Work: The Contractor shall complete the Scope of Work no later than:

**July 29, 2022**

**Submittal of Documents.** The Contractor shall not commence the Work under this Contract until the Contractor has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Signed Agreement           | <input type="checkbox"/> Workers' Compensation Certificate |
| <input type="checkbox"/> Insurance Certificates & Endorsements | <input type="checkbox"/> W-9 Form                          |
| <input type="checkbox"/> Bonds (as requested by District)      | <input type="checkbox"/> Other: _____                      |

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

**Contract #3140/22(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

\_\_\_\_\_  
Authorized Signature                      Date

Patrick Gaffney, Chief Business Official  
Print Name

CONTRACTOR

\_\_\_\_\_  
Authorized Signature                      Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Cleary Consultants Inc.  
Company Name

## Terms and Conditions

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

**2. Site Examination:** Contractor 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:** Contractor 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. Subcontractors:** District reserves the right to approve any subcontractors engaged for any Work. Contractor agrees to bind every subcontractor by the terms of the PO, including, without limitation, indemnification, insurance, and warranty requirements. If Contractor subcontracts any of the Work or Contract, Contractor shall be fully responsible to District for Work of its subcontractors and persons directly or indirectly employed by them. The Contract shall not create any contractual relations between any subcontractor and District.

**5. Termination:** District may terminate the Contract immediately upon District's written notice to Contractor. 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. Contractor agrees that District may request changes, reductions, or additions to the Work. The Contract Price shall be adjusted by reasonable valuations of the cost. Contractor shall provide District with all information to substantiate the cost whether the Work will be done by Contractor or a subcontractor. Prior to approval of a change order, Contractor shall submit any request for a time extension, and all information substantiating its claim for delay. If Contractor 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, Contractor 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, Contractor 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 Contractor's notice, District shall investigate the conditions, and may issue a change order under the Contract procedures. A District and Contractor dispute as to whether the conditions differ materially, involve hazardous waste, or cause a change in Contractor's cost or time to perform the Work shall not excuse Contractor from a Contract completion date. Contractor shall proceed with all Work. Contractor shall retain any rights from Contract or law regarding dispute resolution.

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

**10. Correction of Errors:** Contractor shall perform, at its own cost, without reimbursement from the District, any work necessary to correct errors or omissions caused by Contractor'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. Contractor Supervision:** Contractor shall provide competent supervision of personnel on the Work Site and of equipment use.

**13. Clean Up:** Contractor shall remove debris. Contractor 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:** Contractor shall provide District safe and proper access to all Work at all times.

**15. Safety; Protection of Work & Property:** Contractor 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, Contractor may act to prevent loss or injury. Contractor shall ascertain from District all rules and regulations about safety, security, and driving on school grounds.

**16. Assignment of Contract:** Contractor 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, Contractor 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 Contractor proposes to defend District.

**20. Payment:** Unless otherwise specified, Contractor 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 Contractor'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 Contractor Work (7) unauthorized deviations from Contract; (8) Contractor 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 Contractor is liable under the Contract; and (11) any other sums which District may recover from Contractor 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:** Contractor and its employees, agents, and subcontractors shall maintain in force, at Contractor's sole cost, all licenses and permits required for furnishing the materials, supplies, or Work.

**22. Independent Contractor Status:** While carrying out the Work, Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of District. Contractor is solely responsible for its Worker's Compensation insurance, taxes, and similar obligations. Contractor 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.

Contractor 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. Contractor shall require like compliance by all subcontractor(s).

**24. Warranty/Quality:** Unless specified otherwise, Contractor, 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:** Contractor shall give all notices and comply with all laws, ordinances, rules and regulations concerning the Work ("Laws"). If Contractor observes that any Work varies from any Laws, Contractor 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 Contractor's receipt of District's written termination notice. If Contractor performs any work that is in violation of Laws, without first notifying District, Contractor 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, Contractor 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 Contractor's request for final payment.

**27. Anti-Trust Claim:** Contractor and its subcontractor(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 Contractor, 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. Contractor's Insurance:** Contractor 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. Contractor 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. Contractor's policy(ies) shall be primary; insurance carried by District shall be secondary. Contractor shall not allow any subcontractor, 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 Contractor at no additional cost to the District, (3) accompanied by all necessary MSDS(s).

### CERTIFICATES:

**36. Fingerprinting:** Contractor shall meet applicable fingerprinting and criminal background investigation requirements of Education Code sections 45125.1 or 45125.2. **Contractor 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, Contractor shall not use lead-based paint, lead plumbing and solders, or other lead sources, and only trained, state-certified contractors, inspectors and workers shall undertake action to abate existing lead risk factors. **Contractor 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 Contractor prior to PO execution, Contractor 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 PROFESSIONAL SERVICES (E.G., ARCHITECT, SPECIAL INSPECTOR, PROJECT MANAGER, ETC.):

**1.** Contractor has in force, and throughout the Work shall maintain with the minimum limits, the following insurance: Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor's profession: \$1,000,000 for each occurrence and \$2,000,000 general aggregate.

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

**1. Payment & Performance Bonds:** Contractor 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:** Contractor and subcontractor(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:** Contractor 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. Contractor and subcontractors 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 Contractor and subcontractors. Failure to comply may result in penalties.