

AGREEMENT FOR GEOLOGICAL INVESTIGATION AND MATERIALS TESTING SERVICES

THIS AGREEMENT FOR GEOLOGICAL INVESTIGATION AND MATERIALS TESTING SERVICES ("Agreement") is made and entered into effective April 29, 2020, by and between the Milpitas Unified School District, a school district duly organized and existing under the laws of the State of California (the "District"), and Cornerstone Earth Group (the "Consultant"), with respect to the following recitals:

- A. District proposes to undertake the construction of an improvement project which requires the services of a duly qualified and licensed geological investigation and materials testing consultant.
- B. Consultant represents that Consultant is licensed to provide geological investigation and materials testing services in the State of California and is specially qualified to provide the services required by the District in this Agreement.
- C. The parties have negotiated the terms pursuant to which Consultant will provide such services and reduce such terms to writing by this Agreement.

In consideration of the covenants and conditions contained in this Agreement, the parties agree as follows:

1. **Retention of Consultant.** District retains Consultant to perform, and Consultant agrees to provide to District, for the consideration and upon the terms and conditions set forth below, the geological investigation and materials testing services specified in this Agreement. Consultant agrees to perform such services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. All services performed by the Consultant under this Agreement shall be conducted in a manner consistent with the level of care and skill ordinarily exercised by geological investigation and materials testing consultants specially qualified to provide the services required by the District.
2. **Description of Project.** The project concerning which such geological investigation and materials testing services shall be provided ("the Project") is described as: Milpitas High School Performance Arts Center & Gymnasium.
3. **Basic Services.** Consultant's Basic Services consist of geological investigation and materials testing services more specifically described in the attached Exhibit A. The term of this Agreement is through June 30, 2023.

In addition, as a part of its Basic Services, the Consultant shall assist the District in evaluating claims, disputes and other matters in question between the contractor and the District relating to Consultant's work, including but not limited to claims made against the District as a result of Consultant's alleged or claimed errors or omissions, and shall in all instances provide such truthful testimonial assistance as may be required by the District at no cost to the District.

Consultant shall confer and cooperate with District's other consultants. Consultant shall take precautions to minimize any damage due to Consultant's activities. Consultant shall be responsible and liable for any damage Consultant causes through its wrongful acts or omissions.

During the construction phase, Consultant shall visit the Project site when requested by District to observe conditions encountered by the contractor and to assess the progress and quality of contractor's work. Consultant shall participate in job site meetings as requested by District.

The Consultant must comply with the applicable requirements of the Division of State Architect Construction Oversight Process ("DSA Oversight Process"), including, but not limited to, (a) obtaining a copy of the DSA-approved construction documents and Statement of Structural Tests and Special Inspections (DSA form 103) from the Architect before the beginning of construction; (b) reporting all project related activities to the Inspector of Record. The Inspector of Record is responsible for monitoring the work of the Laboratory of Record and Special Inspectors to ensure the testing and special inspection program is satisfactorily completed; (c) submitting applicable verified reports (DSA forms 291, 292, and 293) to DSA, Inspector of Record, Owner and Architect; and (d) coordinating with the Owner, Owner's Architect, any Construction Manager, the Inspector of Record, and the Contractor to meet the DSA Oversight Process requirements without delay or added costs to the Project.

If Consultant determines contractor is not meeting the requirements of Consultant's geological recommendations or the plans and specifications for such geotechnical work, Consultant shall immediately bring that information to District's attention.

Consultant shall retain all samples for 90 days.

4. **Additional Services.** Any services not included in this Agreement shall be considered "Additional Services." Compensation for additional services shall be a fee to be agreed upon by the parties in writing prior to performance of such services by Consultant. Consultant shall keep complete records showing all hours worked and all costs and charges incurred for Additional Services. District shall be given reasonable access to those records for audit purposes.

5. **Payment.** For all "Basic Services" satisfactorily performed, compensation shall be up to \$61,000. Basic and Additional Services satisfactorily performed shall be billed monthly via properly documented and submitted invoices. Invoices that are not disputed by District shall be paid within 30 days of District's receipt of the invoice. Consultant shall comply with any applicable prevailing wage law.

6. **Insurance.** Consultant shall purchase and maintain insurance that will protect Consultant from the claims set forth below that may arise out of or result from the Consultant's performance of services or failure to perform services required by this Agreement:

- a. Claims under Workers' Compensation, disability benefits and other similar employee benefits acts that are applicable to the work performed;

- b. Claims for damages because of bodily injury, occupational sickness or disease or death of Consultant's employees, agents or invitees;
- c. Claims for damages because of bodily injury or death of any person;
- d. Claims for damages insured by usual personal injury liability coverage that are sustained (1) by any person as a result of an offense directly related to the employment of such person by the Consultant or (2) by any other person;
- e. Claims for damages, other than to the work itself because of injury to or destruction of tangible property, including loss of use therefrom; or
- f. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

Consultant's comprehensive general and automobile liability insurance shall be written for not less than the following limits of liability:

Comprehensive General Liability

Personal Injury:

\$1 Million Each Occurrence

\$2 Million Aggregate

Property Damage:

\$1 Million Each Occurrence

\$2 Million Aggregate

Comprehensive Automobile Liability

Bodily Injury:

\$2 Million Each Occurrence

Property Damage:

\$1 Million Each Occurrence

Consultant shall also maintain errors and omissions insurance on an occurrence basis with limits of at least \$2 Million.

7. **Hazardous Materials.** In the event the District or Consultant becomes aware of the presence of, or exposure of persons to, asbestos, polychlorinated biphenyl (PCB) or any other toxic or hazardous contaminants, materials, air pollutants or water pollutants at the Project, or the substantial risk thereof, each shall have a duty immediately to notify the other in writing.

8. **Compliance with Laws.** Consultant shall be familiar with and shall comply with all State and Federal laws and regulations applicable to the Project or lawfully imposed upon the Project by agencies having jurisdiction over the Project.

9. Termination.

a. District may unilaterally terminate this Agreement for any reason, in its absolute discretion, by giving Consultant seven (7) days written notice of termination.

b. This Agreement may also be terminated by either Party upon seven (7) days written notice should the other Party fail substantially to perform their duties or for any material breach under this Agreement.

c. In the event of termination, Consultant shall be compensated for all services satisfactorily performed to the termination date and, if terminated under subparagraph (a) above, any costs incurred by reason of such termination; but less any amounts the District is entitled to withhold under law or this Agreement.

10. Independent Contractor Status. Consultant and any and all agents and employees of Consultant shall perform the services required pursuant to this Agreement as an independent contractor, not as officers, employees, or agents of the District. In providing the services contemplated by this Agreement, Consultant shall maintain a professional working relationship with the District, the Contractor, the Inspector and the Architect. Nothing contained in this Agreement shall be deemed to create any contractual relationship between Consultant and the Architect, Inspector or the Contractor for the Project, nor shall anything contained in this Agreement be deemed to give any third party any claim or right of action against the District or the Consultant which does not otherwise exist.

11. Indemnity. Consultant shall indemnify, defend and save the District, its Board of Trustees, officers, agents, and employees harmless from any and all claims damages, losses, causes of action and demands, including reasonable attorney's fees and costs, incurred in connection with or in any manner arising out of Consultant's negligent performance of or failure to perform any of the duties contemplated by this Agreement or for any tax liability arising out of this Agreement.

12. Taxes. Consultant shall be liable and solely responsible for paying all required taxes including, but not limited to, Federal and State income taxes and social security taxes. Consultant agrees to indemnify, defend and hold the District harmless from any liability which Consultant may incur to the Federal or State governments as a consequence of this Agreement. All payments to the Consultant shall be reported to the appropriate Federal and State tax authorities as required.

13. Successors and Assigns. The District and Consultant, respectively, bind themselves, their successors, assigns, and representatives to the other Party to this Agreement, and to the partners, successors, assigns, and legal representatives of such other Party with respect to all terms of this Agreement. Neither District nor Consultant shall assign or transfer any interest in this Agreement without the written consent of the other.

14. Notices. All payments and any notices or communications under this Agreement shall be in writing and shall be deemed to be duly given if served personally on the Party to whom it is directed

or shall be deemed served when deposited in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, and addressed in the case of:

Consultant: Cornerstone Earth Group
1259 Oakmead Pkwy
Sunnyvale, CA 94085

District: Milpitas Unified School District
Attn: Bond Dept
1331 E Calaveras Blvd
Milpitas, CA 95035

15. **Governing Law.** This Agreement shall be governed by the laws of the State of California, excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Santa Clara, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

16. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

17. **Amendment.** This Agreement cannot be changed or supplemented orally and may be modified or superseded only by written instrument executed by all parties.

18. **Compliance with Law.** While performing the services contemplated by this Agreement, Consultant agrees to comply with all applicable laws and regulations.

19. **Requests.** Consultant agrees to timely and properly complete all reports requested by the District or as required by law. In addition, Consultant agrees that District has a right to a copy of all reports and other records created or maintained by Consultant.

20. **Counterparts.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

21. **Interpretation.** The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either Party.

22. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and supersedes any prior agreement or understanding. There are no understandings, agreements, representations or warranties, expressed or implied, not specified in this Agreement. Consultant, by the execution of this Agreement, acknowledges that Consultant has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

23. **Warranty of Authority.** The persons signing this Agreement warrant that they are legally authorized to do so on behalf of the respective Parties, and by their signatures to bind the respective Parties to this Agreement.

* * * * *

CONSULTANT

DISTRICT

Cornerstone Earth Group

Milpitas Unified School District

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____