

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT

**AGREEMENT FOR PROFESSIONAL SERVICES
PROJECT INSPECTOR SERVICES**

This Agreement for Project Inspector Services ("Agreement") is dated _____, 2016 for reference purposes only and is entered into between the **Santa Monica-Malibu Unified School District** ("District") and _____ ("Inspector"). The District and Inspector may be individually referred to herein as a "Party" or collectively referred to herein as the "Parties."

RECITALS

WHEREAS, District is [brief description of Project, e.g., renovating a classroom building, constructing a new science building, etc. at the District's _____ campus] under the jurisdiction of the Division of State Architect ("DSA"), commonly known as the _____ ("Project" or "Site"), and has awarded a construction contract to _____ to perform the work of the Project ("Construction Work"); and

WHEREAS, District has retained the services of _____ as the architect and design professionals of the Construction Work ("Architect"); and

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

WHEREAS, District requires the services of a DSA-approved project inspector during the Construction Work; and

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

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

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. **Inspector as District Representative.** Inspector shall, as requested by District, act as the project inspector for the Project. 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 the Project as set forth herein in this Agreement.
 - 2.1. The following dollar amount is the estimated approximate hard construction costs for the Project:

_____ Dollars (\$_____).

- 2.2. Inspector's fee for the performance of Services at the Project shall be _____ **Dollars (\$_____)** per month for a total maximum not-to-exceed fee of _____ **Dollars (\$_____)**.
- 2.3. The Inspector shall submit a monthly itemized statement of Service charges and expenses for the Project (as applicable) to the District on the fifth (5th) day of each month. The itemized statement shall show the days and hours worked each workday Inspector performs Services for the previous month. 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.
- 2.4. Payment of all undisputed amounts will be due within thirty (30) days of receipt of Inspector's invoice.
- 2.5. The daily job log referred to herein shall detail the time spent by the Inspector in the performance of Services pursuant to this Agreement.
- 2.6. Inspector shall provide to the District on a timely basis and to not cause a delay in DSA's approval of the Project, all verified report(s) for all scope(s) of Construction Work and all other required Project documents if not already completed and provided to the District. District shall retain five percent (5%) of Inspector's Fee or Ten Thousand Dollars (\$10,000), whichever is greater, until Inspector has filed all required verified report(s) and other Project documents.
- 2.7. If requested by the District, the Inspector shall provide additional or extended Services for the Project as may be necessary because of changed conditions including, without limitation, conditions 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. Those additional or extended Services shall be as agreed to by the District and shall be based on rates at or below the hourly, daily, weekly, or monthly rates as indicated here:

2.7.1. Maximum Rate for Additional or Extended Services.

Hourly	\$_____ / Hour
Daily	\$_____ / Day
Weekly	\$_____ / Week
Monthly	\$_____ / Month

3. **Term.** The term of this Agreement shall be for the period of construction of the Project and shall terminate when the notice of completion for the Construction Work is recorded ("Term"), unless otherwise terminated or cancelled earlier.
4. **Submittal of Documents.** Inspector shall not commence the Services under this Agreement until Inspector has submitted and 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> X </u> Workers' Compensation Certificate
<u> X </u> Insurance Certificates & Endorsements	<u> X </u> W-9 Form
<u> N/A </u> Bonds (as requested by District)	<u> X </u> Fingerprinting/Criminal Background Investigation Certification
<u> </u> Other: _____	

5. **Expenses.** District shall not be liable to Inspector for any costs or expenses paid or incurred by Inspector in performing the Services, except for those set forth in this Agreement. Inspector agrees that travel may be required, at Inspector's expense. These travel expenses are not reimbursable.
6. **Standard of Care.** Inspector shall perform Services, obtain findings, and prepare recommendations in accordance with generally and currently accepted principles and practices for project inspectors of California school buildings and of the work of construction or alteration of school buildings.
7. **Conflict of Interest.** 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. Inspector shall not have the authority to assist any person, contractor, entity, or their employees, agents, or subcontractors in the performance of any Construction Work on the Project. Inspector shall not undertake any responsibilities of any person, contractor, entity, or their employees, agents, or subcontractors for the Construction Work of the Project.
8. **Direction of Architect.** Inspector shall act under the direction of the Architect and shall be responsible to the Department of General Services, Division of the State Architect, for enforcement of the Project plans and specifications.
9. **Construction Manager.** Inspector shall also work with the construction manager if the District uses a construction manager on any portion of the Project. If District does not use a construction manager on the Project, then all references to a construction manager herein shall mean the District.
10. **Authority to Reject or Stop Construction Work.** Inspector shall not have the authority to direct a contractor in the execution of the Construction Work nor to stop work on the Project. However, if Inspector observes Construction Work being performed in deviation from the approved plans, specifications, or change orders or in violation of any local, state, or federal statute, Inspector shall, if such deviation or violation is not immediately corrected by contractor when brought to the attention of contractor, direct the contractor in writing, while simultaneously notifying the Architect, and the District, to cease installation of that nonconforming portion of Construction Work, pending further decision by Architect and District, and shall in all cases, make a written record of the event. Inspector shall deliver copies of the written record to District within twenty-four (24) hours of the event.
11. **On-Site Presence.** Inspector shall act as the Project Inspector on a full-time, continuous basis, including during off-hours and weekend-hours as deemed necessary by Inspector, the Architect, and/or District. Inspector shall be physically present at the Project at all times necessary for performance of its duties as project inspector. Inspector shall have personal knowledge of the Construction Work of the Project at all stages. Inspector shall accompany the Architect, District, the construction manager, and/or other consultants when any of them are observing the Construction Work. Inspector shall be physically present for all concrete

work and masonry work.

12. **Safety Precautions.** Inspector shall take all reasonable safety precautions related to performance of the Services under this Agreement, and shall provide reasonable protection to prevent damage, injury or loss to its employees or personnel providing Services hereunder and other persons who may be affected thereby. Inspector shall promptly provide notice to the District of any accidents arising out of or in connection with the Services, causing death, personal injury or property damage including full details and statements of any witnesses. In addition, if death, serious personal injuries or serious property damages are caused, the accident shall be reported to the District immediately by telephone or messenger.

13. **Inspector's General Obligations, Duties, and Responsibilities.** Inspector shall completely and timely inspect all portions of the Construction Work as it progresses.

13.1. Inspector shall endeavor to guard District and the State of California ("State") against apparent defects and deficiencies in the Construction Work and shall act on behalf of 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.

13.2. Inspector shall study and fully comprehend the requirements of the Construction Documents in order to provide competent inspection of the Construction Work. Inspector shall consult the Architect to resolve any uncertainties in Inspector's comprehension of the plans and specifications. 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.

13.3. Inspector shall identify all non-compliant Construction Work as work on the Project progresses in order to facilitate timely corrective action.

13.4. 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. 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.

13.5. Inspector shall comply with all the requirements of a DSA project inspector including, without limitation, all the requirements included and/or referenced in the following forms:

13.5.1. Form DSA IR A-7, Project Inspector: Certification and Approval (Revised 02-22-13).

13.5.2. Form DSA IR A-8, Project Inspector and Assistant Inspector: Duties and Performance (Revised 12-01-12).

13.6. Inspector shall not authorize deviations from the Contract Documents.

14. **Inspector Maintenance of Records, Job File, and Building Codes.**

14.1. **Inspection Records.** 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:

- 14.1.1. **Record of Inspection on Plans.** A systematic record of the inspection of all Construction Work required by the Construction Documents. 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.
- 14.1.2. **Construction Procedure Records (CCR, Title 24, Part 1, Section 4-342(6)).** These shall include, without limitation, concrete placement operations, welding operations, pile penetration blow counts, and other records specified on the approved Construction Documents.
- 14.1.3. **Deviations and Resolution of Deviations.** The resolution of reported deviations.
- 14.1.4. **Daily Job Log.** Daily job log of the Inspector's time spent, areas and scopes inspected, and tasks performed on the Project.
- 14.2. **Job File.** Inspector shall maintain a record of his/her attendance on the Project and shall maintain files of schedules, notes, communications, records, documents, and drawings on behalf of the District.
 - 14.2.1. 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).
 - 14.2.2. Inspector shall assist District staff in preparing quarterly progress reports to the governing board of the District.
 - 14.2.3. In addition, the Inspector shall organize and maintain a complete system of construction records, including, but not limited to:
 - 14.2.3.1. All Inspection Records.
 - 14.2.3.2. Job memo file.
 - 14.2.3.3. Project conference file.
 - 14.2.3.4. Progress reports.
 - 14.2.3.5. Test and Inspection List (Form DSA-103-1 (Revised 01-01-12)).
 - 14.2.3.6. Correspondence file, including, without limitation, all correspondence from/to Architect, construction contractor(s), construction manager(s), District, and DSA.
 - 14.2.3.7. Complete change order file.
 - 14.2.3.8. All Addenda.
 - 14.2.3.9. All deferred approval documents.
 - 14.2.3.10. Complete shop drawings, samples, and submittal file.
 - 14.2.3.11. All Contract Documents including, without limitation, the approved plans and specifications.
 - 14.2.4. All records and documents kept by Inspector shall be and remain the property of District.

14.3. **Building Codes.** In addition to the above documents, Inspector shall keep at the Project 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:

- 14.3.1. CCR, Title 24, Part 1 (Administrative Code);
- 14.3.2. CCR, Title 24, Part 2, Volumes 1, 2, and 3 (Building Code);
- 14.3.3. CCR, Title 24, Part 3 (Electrical Code);
- 14.3.4. CCR, Title 24, Part 4 (Mechanical Code);
- 14.3.5. CCR, Title 24, Part 5 (Plumbing Code);
- 14.3.6. CCR, Title 24, Part 6 (Energy Code).

15. Communications, Reporting, and Notifications.

15.1. **DSA Notification.** Inspector shall notify DSA:

15.1.1. At least forty-eight (48) hours prior to the start of any Construction Work at the Project.

15.1.2. At least forty-eight (48) hours prior to completion of any foundation excavations/trenches.

15.1.3. At least forty-eight (48) hours prior to the first concrete pour/placement at the Project.

15.1.4. When Construction Work has been suspended for a period of more than two (2) weeks.

15.2. **Notification of District and Architect.** Inspector shall immediately report to 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. 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. Inspector shall advise the District of needed inspections related to the status of the Construction Work, and District shall provide the schedule of Construction Work to Inspector so that both Parties arrange timely inspections.

15.3. **Deviation Notification of Contractor(s).** 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. Inspector shall document all resolutions of reported deviations and make them part of the Inspection Records.

15.4. **Contractor Inquiries.** Contractors are expected to direct inquiries regarding Construction Document interpretation to the Architect through the Inspector, including any contractor's uncertainties regarding the Construction Documents. Inspector shall

document these inquiries and immediately forward them to the Architect for response.

16. Inspector Responsibilities for Forms and Reports.

16.1. **Semi-Monthly Reports.** Inspector shall submit semi-monthly reports on the 1st and the 15th of each month to District, the Architect, and DSA.

16.2. **Verified Reports.** Inspector shall submit verified reports at the following times that will include notification of outstanding deviations:

16.2.1. Construction Work on the Project is suspended for a period of more than one (1) month.

16.2.2. Inspector is terminated for any reason.

16.2.3. DSA requests a verified report.

16.2.4. If District occupies any building on the Project.

16.2.5. When the Construction Work is complete.

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

16.3. **All Other Reports.** In addition, 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. 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.

17. Inspector Responsibilities for Laboratory Structural Tests. 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.

18. Inspector Responsibilities at Beginning of Occupancy. Inspector shall observe the District's occupancy or movement of District-furnished equipment to the Project before completion, and record and report any damages occurring so any claims may be fully documented.

19. Compliance with Applicable Laws. 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, or specifications is to be construed to permit Construction Work not conforming to these codes.

19.1. California Code of Regulations, Title 24, including amendments, in the edition referenced in the Contract Documents.

- 19.2. Regulations of the State Fire Marshall (Title 19 of the California Code of Regulations) and applicable local fire safety codes.
 - 19.3. Labor Code of the State of California – Division 2, Part 7, Public Works and Public Agencies.
 - 19.4. Education Code of the State of California.
 - 19.5. Industrial Accident Commission's Safety Orders, State of California.
 - 19.6. National Electrical Safety Code, U. S. Department of Commerce.
 - 19.7. National Board of Fire Underwriters' Regulations.
 - 19.8. Manual of Accident Prevention in Construction, latest edition, published by the American General Contractors of America.
20. **Compliance with DSA Inspection Card Process.** Inspector shall comply with the DSA inspection card process that establishes specific construction milestones that must be approved by the Inspector before contractor(s) can start subsequent work on a project.
21. **Facilities/Equipment.** District shall provide for Inspector's operational needs, such as office supplies, telephone, and fax machine, unless otherwise agreed to by the Parties.
22. **Inspector Certification.** Inspector shall provide the District a copy of documents satisfactory to the District certifying that Inspector holds proper state certification and approval by DSA to perform the required Services for this Agreement. Inspector shall also provide any other documents or certification requested by the District. Inspector shall initiate and provide the District with Form DSA-5, or any more current qualification/certification form.
23. **Substitute Inspector and/or Assistant Inspector.** Inspector shall provide the Services throughout the Term, and shall not delegate its duties without the full knowledge and prior written consent of the District. In the event of Inspector's absence for more than two (2) consecutive days or unavailability for scheduled inspections, Inspector, at no cost to District, shall secure a substitute inspector and/or assistant inspector who shall be appropriately certified, approved by DSA, and pre-approved in writing by District, to perform the Services. Certification documents for the approved substitute inspector(s) and/or assistant inspector(s) shall be presented to 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. Inspector shall provide technical guidance and monitoring of all substitute inspector(s) and assistant inspector(s).
24. **Other Jobs Outside of the Project.** 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 District, and without a reduction in compensation proportionate to the amount of time Inspector is required to be absent for responsibilities to another project.
- 24.1. In the event that this Agreement involves a company of inspectors, a DSA-approved inspector shall be designated as the Inspector for District, and shall be on constant duty at the Project as described in this Agreement.
 - 24.2. 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.

25. District's Evaluation of Inspector and Inspector's Employees and/or Subcontractors.

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

25.1. Requesting that District employee(s) evaluate Inspector and Inspector's employees and subcontractors and the performance of each.

25.2. Announced and unannounced observance of Inspector, Inspector's employee(s), and/or subcontractor(s).

26. Confidentiality. Inspector and all personnel designated by Inspector to perform Services under this Agreement shall maintain the confidentiality of all information received in the course of performing any Services pursuant to this Agreement. This requirement to maintain confidentiality shall extend beyond the effective termination date of the Agreement.

27. Independent Contractor. Inspector shall act as an independent contractor and shall not be an employee, officer, agent, partner, or joint venture of 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 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 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.

28. Labor Code Requirements. Since Inspector is performing Services as part of an applicable "public works" or "maintenance" project, and since the total compensation is \$1,000 or more, Inspector and its subcontractors shall comply with all applicable provisions of the California Labor Code sections 1720-1861, without limitation, the payment of the general prevailing per diem wage rates for public work projects (including repairs and maintenance, where applicable) of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with the District/COE. In addition, Inspector and each subcontractor shall comply with Sections 1735, 1777.5 and 1777.6, forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Inspector or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. **Registration:** As applicable, Inspector and its subcontractors shall comply with the registration and qualification requirements pursuant to sections 1725.5 and 1771.1 of the California Labor Code. **Certified Payroll Records:** Inspector and its subcontractor(s) shall keep accurate certified payroll records of employees, as applicable, and shall make them available to the District/COE immediately upon request.

29. 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.

30. **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.

31. **Audit.** Inspector shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Broker transacted under this Agreement. Inspector shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Inspector shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Inspector and shall conduct audit(s) during Inspector's normal business hours, unless Inspector otherwise consents. If the Agreement involves the expenditure of public funds in excess of ten thousand dollars (\$10,000), the Agreement shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment. The audit shall be confined to those matters connected with the performance of the Agreement, including, but not limited to, the costs of administering the Agreement.

32. Termination.

32.1. **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.

32.2. **Termination For Convenience.** District may terminate this Agreement by written notification seven (7) days prior to the effective date of the termination. District shall notify DSA upon the termination of this Agreement as provided herein.

32.3. **Termination for Cause.** District may terminate this Agreement immediately for cause. Cause shall include, without limitation:

32.3.1. Material violation of this Agreement by Inspector, including without limitation, failure to provide required reports; or

32.3.2. Any act by Inspector exposing the District to liability to others for personal injury or property damage; or

32.3.3. 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.

32.3.4. In the event of a termination for cause, the District may secure the required services from another project inspector. If the expenses, fees, and/or costs to the District exceed the cost of providing the service pursuant to this Agreement, Inspector shall immediately pay the excess expenses, fees, and/or costs to District upon the receipt of the District's notice of these expenses, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

32.4. **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.

33. **Indemnity.** To the fullest extent permitted by law, the Inspector shall, defend, indemnify, protect, and hold harmless the District, and its employees, officers, trustees and agents from and against any and all claims, demands, losses, responsibilities, liabilities, costs, damages, fines, penalties of any kind ("Claim"), arising out of, pertaining to or relating to, in whole or in part, the negligent, reckless or willful acts, omissions or other misconduct of the Inspector, its sub-consultants, or their respective agents or employees in performing the Services. The indemnification specified herein excludes Inspector's liability as to the active or sole negligence or willful misconduct of the District. The foregoing shall include without limitation, attorneys' fees, experts' fees and costs, investigation expenses and costs incurred by the District, and any defense afforded pursuant to this paragraph will be provided by counsel acceptable to the District. This obligation is not limited in any way by the amount or type of damages or compensation payable to Inspector or its sub-consultant(s) under applicable policies of insurance, workers' compensation acts, disability benefits acts or other employee benefits acts. This obligation shall apply during the Term of the Agreement and shall survive any termination of this Agreement until any such Claim is barred by the applicable statute of limitation and is in addition to any other rights or remedies that the District may have under the law or under this Agreement.

34. **Insurance.**

34.1. Inspector shall procure and maintain during the life of the Project the following insurance with minimum limits equal to the amount indicated below.

34.1.1. **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.

34.1.2. **Workers' Compensation and Employers' Liability Insurance.**

In accordance with provisions of section 3700 of the California Labor Code, 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.

34.1.3. **Professional Liability (Errors and Omissions).** 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 General Aggregate	\$ 1,000,000 \$ 2,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	\$ 1,000,000 \$ 1,000,000
Professional Liability	\$ 1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

34.2. **Proof of Carriage of Insurance.** 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 District and approved by District. Certificates and insurance policies shall include the following:

34.2.1. 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."

34.2.2. 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.

34.2.3. An endorsement stating that 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.

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

34.3. **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 District.

35. **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
Santa Monica-Malibu Unified School
District
1651 16th Street
Santa Monica, California 90404
ATTN: _____
Facsimile: (____) _____

Inspector

Telephone: (____) _____

ATTN:

Facsimile:

Telephone:

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.

36. **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.
37. **Fingerprinting.** 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. 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. 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 District, or acting as independent contractors of 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.
38. **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, Inspector must submit, upon request by District, appropriate documentation to District identifying the steps Inspector has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
39. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.
40. **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

Proposals (“RFQ/RFP”), the RFQ/RFP and 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 Inspector’s Proposal. In no case shall a document calling for lower quality material or workmanship control.

41. **Integration; Extent of Agreement.** This Agreement represents the entire and integrated contract between District and 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 District and 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.
42. **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.
43. **Disputes; Continuation of Services.** Any claim, dispute or controversy that the Inspector may have regarding the performance, or any term or provision, of this Agreement including, but not limited to, claims for additional compensation, shall be submitted to the District in writing within thirty (30) days after its occurrence. The District and the Inspector shall attempt to negotiate a resolution of such claim, dispute or controversy. However, except in the event of the District’s failure to make payment of undisputed amounts of the sums due Inspector hereunder, notwithstanding any disputes between District and Inspector, Inspector shall continue to provide and perform Services pending a subsequent resolution of such disputes. All claims, disputes, or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution.
44. **Attorneys’ Fees.** Except as authorized by law or as provided in Article 33 hereunder, neither the District nor the Inspector shall recover from the other any attorneys’ fees or other costs associated with or arising out of any legal, administrative or other proceedings filed or instituted in connection with or arising out of this Agreement or the performance of either the District or the Inspector thereunder.
45. **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.
46. **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, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status 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).
47. **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: _____, 2016

Dated: _____, 2016

Santa Monica-Malibu Unified School District _____

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

SAMPLE

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 Services of this Agreement.

Date: _____

Proper Name of Inspector: _____

Signature: _____

Print Name: _____

Title: _____

(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 Services under this Agreement.)

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”):

[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.] Inspector’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 Inspector’s employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Inspector 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: _____
District Representative’s Name and Title: _____
Signature: _____

The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Inspector’s services under this Agreement and Inspector certifies its compliance with these provisions as follows: *“Inspector certifies that the Inspector has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Inspector’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 Inspector, 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.”*

Megan’s Law (Sex Offenders). I have verified and will continue to verify that the employees of Inspector that will be on the Project site and the employees of its subcontractor(s) that will be on the Project site are **not** listed on California’s “Megan’s Law” Website (<http://www.meganslaw.ca.gov/>).

[MUST BE COMPLETED BY INSPECTOR’S AUTHORIZED REPRESENTATIVE.] I am a representative of the Inspector 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 Inspector.

Date: _____
Name of Inspector or Company: _____
Signature: _____
Print Name and Title: _____