**PROFESSIONAL SERVICE AGREEMENT**

This PROFESSIONAL SERVICE AGREEMENT (“Agreement”), dated \_\_\_\_\_ 202\_ (for referenced purposes only), is entered into by and between the \_\_\_\_\_\_\_\_\_\_\_\_\_, a political subdivision of the State of California (the “DISTRICT”) and \_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_ (“CONSULTANT”). DISTRICT and the CONSULTANT are sometimes hereinafter referred to collectively as the “Parties” or each individually as a “Party.”

**RECITALS**

**WHEREAS**, DISTRICT has determined that it has a need to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“PROJECT”); and

*\*\*\*Delete the following two bracketed paragraphs if there was no RFP/Q\*\*\**

[**WHEREAS**, DISTRICT issued a Request for Proposal (“RFP”) on \_\_\_\_\_\_\_\_\_\_ seeking to hire a\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for the PROJECT; and

 **WHEREAS**, CONSULTANT timely submitted a response to the RFP (“PROPOSAL”) and has demonstrated competence and qualifications for the types services to be performed and at fair and reasonable prices to the DISTRICT; and]

 **WHEREAS**, staff has recommended that the DISTRICT’s Governing Board of Trustees (“BOARD”) award the contract to CONSULTANT for \_\_\_\_\_\_\_\_ services required for the PROJECT; and

 **WHEREAS**, the BOARD voted to accept the PROPOSAL; and

**WHEREAS**, DISTRICT now desires to hire CONSULTANT to perform the services stated in the PROPOSAL, and CONSULTANT desires to provide the services to DISTRICT on the terms and conditions set forth herein.

 **NOW, THEREFORE**, in consideration of their mutual promises and covenants, the Parties hereto do mutually agree as follows:

**AGREEMENT**

1. EMPLOYMENT OF CONSULTANT.

1.1 All of the recitals set forth above are incorporated by this reference and are made a part of this Agreement.

1.2 SCOPE OF SERVICES. DISTRICT hereby agrees to engage CONSULTANT to perform the services described in CONSULTANT’s PROPOSAL dated \_\_\_\_\_\_\_\_\_, 202\_, which is attached to this Agreement as Exhibit “A” and made a part hereof by this reference as though fully set forth herein. CONSULTANT shall perform the services in the PROPOSAL and prepare work products pursuant to generally accepted standards of practice in effect at the time of performance. The scope of services to be performed by CONSULTANT under this Agreement may be amended, from time to time, based on a written agreement of the Parties.

1.3 CONSULTANT enters into this Agreement as, and shall continue to be, an independent contractor. All services shall be performed only by CONSULTANT and CONSULTANT’s employees, unless otherwise agreed to by the DISTRICT in writing. Under no circumstances shall CONSULTANT, or any of CONSULTANT's employees, look to DISTRICT as his/her employer, or as a partner, agent or principal. Neither CONSULTANT, nor any of CONSULTANT's employees, shall be entitled to any benefits accorded to DISTRICT's employees, including without limitation worker's compensation, disability insurance, vacation or sick pay. CONSULTANT shall be responsible for providing, at CONSULTANT’s expense, and in CONSULTANT's name, unemployment, disability, worker's compensation and other insurance, as well as licenses and permits usual or necessary for conducting the services and in accordance with the insurance requirements set forth in Section 22 below.

2. TIME OF PERFORMANCE. The work provided for by this Agreement shall be performed by the CONSULTANT substantially in accordance with the project schedule agreed upon by DISTRICT and the CONSULTANT based on CONSULTANT’S PROPOSAL, which schedule can only be amended by the Parties in writing. Said schedule shall become part of this Agreement as an addendum and incorporated herein. This Agreement recognizes, however, that the nature of the PROJECT and the consequent timing of the performance on CONSULTANT’s services provided for are subject to numerous variables beyond the control of the CONSULTANT. Consequently, the project schedule agreed upon may be modified by mutual separate agreement (“Time Schedule Addendum”) between DISTRICT and the CONSULTANT at any time. CONSULTANT will make all reasonable efforts to complete the PROJECT by the final date indicated in the Time Schedule Addendum and with the normal standard of care associated with such projects.

2.1 The CONSULTANT shall not be in default and shall not be responsible for damages that are caused or result from delay in performance by the CONSULTANT due to strikes, lockouts, accidents, acts of God, or any other delay that is beyond the CONSULTANT’S reasonable control. In the event of such delay, the time of completion shall be adjusted accordingly.

2.2 The CONSULTANT will commence work on the PROJECT and proceed on an expeditious basis following contract execution and receipt of the appropriate written direction to proceed from DISTRICT. Work on the PROJECT will continue to completion, without substantial delay due to events within the control of the CONSULTANT. In the event the work of the CONSULTANT is delayed due to DISTRICT’S direction, the time for completion shall be adjusted accordingly. In the event DISTRICT directs that work on the PROJECT be suspended for a period longer than ninety (90) days for any reason other than dissatisfaction with the CONSULTANT’S work, the CONSULTANT shall be entitled to payment based on a time and materials basis, including expenses incurred, through the date of receipt of written notice of suspension of work from DISTRICT and such payment shall be made without regard to whether or not the project is a milestone-based project or a time and materials project. CONSULTANT shall also be entitled to reasonable re-mobilization costs to suspend and restart the project. Such additional costs shall not be subject to the limitations on compensation.

2.3 In the event DISTRICT abandons the PROJECT and terminates the work of the CONSULTANT for that reason, the CONSULTANT shall be entitled to payment based on time and materials basis, including expenses incurred, through the date of receipt by the CONSULTANT of written notice of abandonment from DISTRICT.

3. DATA AND ASSISTANCE TO BE FURNISHED BY DISTRICT TO THE CONSULTANT. DISTRICT shall make available to the CONSULTANT without charge all such information, data, reports, maps, aerial photographs and records as are now existing or available, or which can be created within a reasonable time by DISTRICT and are required for the performance of the work prescribed by this Agreement. DISTRICT shall cooperate in a reasonable manner with the CONSULTANT in the performance of the work prescribed by this Agreement.

4. LIMITATION ON SERVICES TO BE PROVIDED BY CONSULTANT. This Agreement explicitly defines and limits the services to be provided to DISTRICT by the CONSULTANT. It recognizes that, because of the complexity of the PROJECT, the CONSULTANT will be required to exercise independent professional judgment regarding the performance of its services from time to time, and provides that the CONSULTANT will continuously, throughout the performance of this Agreement, confer with the representatives of DISTRICT regarding the work being performed. Specifically, beyond the scope of this Agreement, and excluded from the services to be provided by the CONSULTANT hereunder, are legal services to be provided in any capacity associated with the PROJECT by DISTRICT.

5. COMPENSATION. DISTRICT agrees to pay the CONSULTANT the amount agreed upon by DISTRICT and the CONSULTANT for the performance of work performed in accordance with this Agreement. Said compensation shall become part of this Agreement as Exhibit “B” (Compensation) and made a part of this Agreement as though fully set forth herein. If agreed in writing and by mutual consent, DISTRICT agrees to pay the CONSULTANT for additional work authorized by DISTRICT for optional services. The CONSULTANT shall invoice DISTRICT, and DISTRICT shall pay the CONSULTANT for services authorized by this Agreement and in conformance with the agreement. Each invoice must identify and itemize the work performed, time on task, and billable materials.

5.1 An invoice may be submitted once monthly for the full or partial completion of specified work performed during the preceding month. Upon receipt of the invoice, DISTRICT shall review the invoice and notify the CONSULTANT within ten (10) calendar days of any discrepancies that DISTRICT believes may exist with the invoice. If no such notice is made to the CONSULTANT, or if the CONSULTANT resolves any discrepancies within twenty (20) calendar days of DISTRICT’S receipt of the invoice, DISTRICT shall remit payment in the full amount of the original or subsequently amended invoice within thirty (30) calendar days of receipt of the invoice.

6. POSSESSION OF MATERIALS PREPARED UNDER THE AGREEMENT. It is agreed all finished or unfinished documents, data, plans, studies, surveys, drawings, maps, models, photographs, and reports prepared by the CONSULTANT under this Agreement shall be provided to and considered the property of DISTRICT. Upon completion of the services to be performed, or upon termination of this Agreement for cause or for the convenience of DISTRICT, those items will be turned over DISTRICT.

7. CHANGES. DISTRICT may, from time to time, require changes in the scope of herein agreed services to be performed by the CONSULTANT. Such changes, including any increase or decrease in the amount of the CONSULTANT’s compensation, which are mutually agreed upon by and between DISTRICT and the CONSULTANT, shall be incorporated in written amendments to this Agreement.

8. TERMINATION OF AGREEMENT FOR CAUSE. DISTRICT may terminate this Agreement upon five (5) days written notice and be relieved of the payment of any consideration to the CONSULTANT thereafter, should the CONSULTANT fail to fulfill in a timely and proper manner his obligations under this Agreement, or if the CONSULTANT shall violate any of the covenants, conditions, or stipulations of this Agreement. In the event of such termination, the possession and distribution of all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the CONSULTANT shall be governed by the provisions of Section 6, above, and the CONSULTANT shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials.

8.1 Notwithstanding the above, the CONSULTANT shall not be relieved of liability to DISTRICT for damages sustained by DISTRICT by virtue of any breach of the Agreement by the CONSULTANT and/or CONSULTANT, and DISTRICT may withhold any payments to the CONSULTANT for the purpose of settlement or until such time as the exact amount of damages due DISTRICT from the CONSULTANT is determined.

 9. TERMINATION FOR CONVENIENCE OF THE CLIENT. DISTRICT may terminate this Agreement at any time by giving written notice to the CONSULTANT of such termination and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination. In that event, the possession and distribution of all finished and unfinished documents and other materials shall be as described in Section 6 above. If the Agreement is terminated by DISTRICT as provided herein, the CONSULTANT shall be paid an amount equal to the total amount of compensation due the CONSULTANT for services rendered and expenses incurred up to the effective date of termination in accordance with the provisions of Section 5 set forth herein, less compensation previously paid.

10. WAIVER. Any of the terms or conditions of this Agreement may be waived at any time by the Party entitled to the benefit of the term or condition, but no such waiver shall affect or impair the right of the waiving Party to require observance, performance or satisfaction either of that term or condition as it applies on a subsequent occasion or any other term or condition of this Agreement.

11. SEVERABILITY. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated.

12. INTERPRETATION; GOVERNING LAW. This Agreement shall be interpreted in accordance with the laws of the State of California. 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 any Party. The rights and obligations of the Parties and the interpretation and performance of this Agreement shall be governed by the laws of California, excluding any statute which directs the application of the laws of another jurisdiction.

 13. INTEREST OF MEMBERS OF CLIENT AND OTHERS. No officer, member, or employee of DISTRICT and no other public official of the governing body of the locality or localities within which the PROJECT is situated or being carried out, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the PROJECT, shall participate in any decision relating to this Agreement which affects his personal interest or shall have any personal or pecuniary interests, direct or indirect, in this Agreement or the proceeds therefrom.

 14. ASSIGNABILITY. The CONSULTANT shall not assign any interest in the same (whether by assignment or novation), without the prior written consent of DISTRICT thereto; provided, however, that claims for monies due or to become due to the CONSULTANT from DISTRICT under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to DISTRICT.

 15. CONFLICT OF INTEREST. The Parties to this Agreement have read and are aware of the provisions of Section 1090 and following and 87100 and following of the Government Code relating to conflict of interest of public officers and employees. CONSULTANT represents that it is aware of no financial or economic interest of any officer or employee of DISTRICT relating to this Agreement. It is further understood that if such a financial interest does exist at the inception of this Agreement, DISTRICT may immediately terminate this Agreement by giving written notice to CONSULTANT. CONSULTANT shall comply with the terms of Government Code section 87100 and following during the term of this Agreement.

 16. FINDINGS AND CONFIDENTIALITY. Any reports, information or data given to or prepared or assembled by the CONSULTANT under this Agreement which DISTRICT requests be kept confidential shall not be made available to any individual or organization by the CONSULTANT and / or the CONSULTANT without the prior written approval of DISTRICT.

 17. COPYRIGHT. No reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of any application for copyright by or on behalf of the CONSULTANT and/ or the CONSULTANT.

18. COMPLIANCE WITH LAW. In the course of performing this Agreement, CONSULTANT shall observe and comply with all applicable federal, state and local laws, regulations and ordinances now in effect or subsequently enacted.

19. NONDISCRIMINATION. Neither CONSULTANT, nor any officer, agent, employee or subcontractor of CONSULTANT shall discriminate in the treatment or employment of any individual or groups of individuals on any ground prohibited by law, nor shall any of them harass any person in the course of performing this Agreement based on gender or any other basis prohibited by applicable law.

 20. COSTS AND FEES IN EVENT OF LITIGATION. In the event legal action is filed to enforce this Agreement or any of its terms, the prevailing Party shall be entitled to receive reasonable attorney fees.

20.1 In an effort to resolve any conflicts that arise during the design or construction of the PROJECT or following the completion of the PROJECT, DISTRICT and the CONSULTANT agree that all disputes between them arising out of or relating to this Agreement may be submitted to non-binding mediation.

20.2 If legal action filed by DISTRICT against the CONSULTANT is dismissed, dropped by DISTRICT, or otherwise not successfully prosecuted, DISTRICT agrees to pay the CONSULTANT any and all costs of defense, including attorney’s fees, expert witness fees, and court costs and any and all other expenses of defense which may be needful, immediately following dismissal of the case or immediately upon verdict being rendered in behalf of the CONSULTANT.

20.3 Similarly, if legal action filed by the CONSULTANT against DISTRICT is dismissed, dropped by the CONSULTANT, or otherwise not successfully prosecuted, the CONSULTANT agrees to pay DISTRICT any and all costs of defense, including attorney’s fees, expert witness fees, and court costs and any and all other expenses of defense which may be needful, immediately following dismissal of the case or immediately upon verdict being rendered in behalf of DISTRICT.

21. HOLD HARMLESS AND INDEMNIFICATION. The CONSULTANT will indemnify DISTRICT for all acts arising out of the CONSULTANT’s willful misconduct, negligent acts, errors, or omissions in the performance of the work pursuant to the contract between DISTRICT and the CONSULTANT. The CONSULTANT will defend, indemnify, and save harmless DISTRICT, its employees, officers, and agents from any and all claims, demands, damages, costs, expenses, judgments or liability of any nature whatsoever which may result from the contract between DISTRICT and the CONSULTANT except for claims, demands, damages, costs, expenses, or judgments resulting solely from the negligence or willful misconduct of DISTRICT.

21.1 DISTRICT will indemnify and hold harmless the CONSULTANT and all of its personnel from and against any and all claims, damages, losses, and expenses (including reasonable attorney’s fees) arising out of or resulting from any claim, damage, loss, or expense caused by the negligent act, or willful misconduct of DISTRICT.

22. INSURANCE. The CONSULTANT shall procure and maintain for the duration of this Agreement insurance as outlined below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the CONSULTANT. The CONSULTANT shall also require the same insurance coverages to be provided by its agents, representatives, or subcontractors.

22.1 Workers compensation insurance with statutory limits and employers’ liability insurance with limits of not less than one million dollars ($1,000,000) per accident.

22.2 Commercial general liability insurance with a combined single limit of not less than one million dollars ($1,000,000) per occurrence and aggregate. Such insurance shall include products/completed operations liability, owners and contractors protective, blanket contractual liability, personal injury liability and broad form property damage coverage. Such insurance shall name the DISTRICT, its appointed and elected officials, and its officers and employees as insureds and shall be primary with respect to any insurance of self-insurance programs maintained by the DISTRICT. Such insurance shall contain standard cross liability provisions.

22.3 Commercial automobile liability insurance with a combined single limit of not less than one million dollars ($1,000,000) per occurrence and aggregate. Such insurance shall include coverage for owned, hired, and non-owned automobiles and shall be provided by a business automobile policy.

22.4 Professional liability (errors and omissions) insurance with a limit of not less than one million dollars ($1,000,000).

22.5 CONSULTANT shall furnish properly executed certificates of insurance to the DISTRICT prior to commencement of work under this Agreement. Such certificates shall:

22.5.1 Clearly evidence all coverages required above, including specific evidence of a separate endorsement naming the DISTRICT as an insured on the commercial general liability and automobile liability insurance policies;

22.5.2 Indicate whether coverage provided is on a claims-made or occurrence basis; and

22.5.3 CONSULTANT shall notify the DISTRICT in the event said insurance is materially changed, terminated, or allowed to expire. Notification shall be within thirty (30) days.

22.6 Such insurance shall be maintained from the time work first commences until completion of the work under this Agreement if an occurrence policy form is used. If a claims-made policy form is used, coverage shall be maintained during the contract term and for a period extending five (5) years beyond the contract date. CONSULTANT shall replace such certificates for policies expiring prior to completion of work under this Agreement and shall continue to furnish certificates five (5) years beyond the contract term, when CONSULTANT has a claims-made form(s).

23. NOTICES. All notices and demands of any kind which either Party hereto may be required or desires to serve upon the other Party under the terms of this Agreement shall be in writing and shall be served upon such other Party by personal service, or by leaving a copy of such notice or demand with a responsible person at the address hereafter set forth, whereupon service shall be deemed complete, by Federal Express or other overnight courier, by telecopy or facsimile transmission, or by mailing a copy thereof by certified mail, postage prepaid, with return receipt requested, addressed as follows:

If to DISTRICT:

 \_\_\_\_\_\_\_\_\_ School District

[ADDRESS]

 Attention: [DISTRICT CONTACT, TITLE]

 Phone:

 Email:

With a Copy to:

Schools Legal Service

 P.O. Box 2445

 Bakersfield, CA 93303

 Attention: [RESPONSIBLE ATTORNEY]

 Phone: (661)636-4830

 Email: \_\_\_\_\_\_@kern.org

If to CONSULTANT:

[NAME]

[ADDRESS]

Attention: [CONSULTANT CONTACT, TITLE]

Phone:

Email:

Service of any such notice or demand made by mail, by telecopy or facsimile transmission, federal express, or other overnight courier shall be deemed complete on the day of actual delivery or receipt (in the case of telecopy or facsimile) as shown by the addressees’ registry or certification receipt. The address to which notices and demands shall be delivered or sent may be changed from time to time by notice served as hereinabove provided by either Party upon the other Party. Whenever notice is given pursuant to this Agreement, email notice must be sent on the same day that the physical copy of the notice is mailed.

24. NO WAIVER. A waiver by either Party hereto of a breach of any of the covenants or agreements hereof to be performed by the other Party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

25. BINDING EFFECT. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, representatives, successors and permitted assigns.

26. HEADINGS; CROSS-REFERENCE; EXHIBITS. The headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms of this Agreement. All cross references in this Agreement, unless specifically directed to another agreement or document, shall refer to provisions in this Agreement and shall not be deemed to be references to any other agreements or document, shall refer to provisions in this Agreement and shall not be deemed to be references to any other agreement or documents. Each of the exhibits attached to this Agreement is hereby incorporated into this Agreement by this reference.

27. PROVISIONS REQUIRED BY LAW DEEMED INSERTED. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted and this Agreement shall be read and enforced as though it were included. If through mistake or otherwise any provision is not inserted or is not correctly inserted, upon application of either Party the Agreement shall be amended to make the insertion or correction.

28. ENTIRE AGREEMENT; AMENDMENT. This Agreement, which includes the recitals set forth on page 1 hereof and exhibits incorporated herein, is intended by the Parties to be the final expression of their agreement with respect to the subject matter hereof, and is intended as the agreement between the Parties. As such, this Agreement supersedes any prior understandings between the Parties, whether oral or written. Any amendments to this Agreement shall be in writing and shall be signed by all Parties hereto.

29. WARRANTY OF AUTHORITY. Each of the Parties signing this Agreement on behalf of DISTRICT and/or CONSULTANT warrant that he or she has the full right, power, legal capacity and authority to execute and deliver this Agreement on behalf of DISTRICT or CONSULTANT, whichever the case may be.

30. COUNTERPARTS; ELETRONIC SIGNATURES. This Agreement may be executed in any number of counterparts, all or which taken together shall constitute one and the same instrument. A facsimile or copy shall be as valid as an original. Pursuant to the Uniform Electronic Transactions Act, Civil Code § 1633.1, et seq., the Parties agree that either Party may execute this Agreement by electronic signature.

IN WITNESS WHEREOF, the CONSULTANT and DISTRICT have entered into this Agreement as of the last date written below.

DISTRICT: CONSULTANT:

\_\_\_\_\_\_\_\_\_\_\_\_ SCHOOL DISTRICT [NAME]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Name:

Its: Its:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Date

**EXHIBIT “A”**

**[CONSULTANT’S NAME] PROPOSAL**

**DATED \_\_\_\_\_\_\_\_\_, 202\_**

**EXHIBIT “B”**

**COMPENSATION**