

**AGREEMENT FOR  
INDEPENDENT CONSULTANT/PROFESSIONAL SERVICES (CONSTRUCTION RELATED)  
BY AND BETWEEN  
LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT  
AND  
BKF ENGINEERS**

- Geotechnical Services       Hazardous Material Testing       Special Testing & Inspection  
 Surveying – Topographic       Water / Sewer Line Testing and Inspection  
 Gas Line Testing and Inspection  
 Other Scope / Services: **Underground Utility Survey**

This Independent Consultant Agreement for Professional Services (“**Agreement**”) is made and entered into as of **June 15, 2022** by and between **Livermore Valley Joint Unified School District** (“**District**”) and **BKF Engineers** (“**Consultant**”) (individually a “**Party**” or collectively the “**Parties**”).

**RECITALS**

**WHEREAS**, the District is authorized by California Government Code section 4525, et seq., to contract with and employ qualified firms, partnerships, corporations, associations, persons, or professional organizations for environmental consulting services through a fair, competitive selection process, which the District utilized; and

**WHEREAS**, the District is authorized by California Government Code section 53060 to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if those persons are specially trained and experienced and competent to perform the special services required; and

**WHEREAS**, Consultant is specially trained, experienced, competent and duly licensed under the laws of the State of California to perform the services pursuant to this Agreement.

**AGREEMENT**

**NOW, THEREFORE**, for good and sufficient consideration, receipt of which is acknowledged, the Parties agree as follows:

**1. Services.**

- 1.1. The Consultant shall provide the Services as indicated in **Exhibit A (“Services” or “Work”)**.
- 1.2. The Services for the Project shall be performed on the following project(s) / site(s) (“**Site(s)**”), as further described in the Scope:
  - **Marylin Avenue Elementary School** – 800 Marylin Ave., Livermore, CA.
  - **Rancho Las Positas Elementary School** – 401 E. Jack London Blvd., Livermore, CA.
  - **Granada High School** – 400 Wall Street, Livermore, CA.
  - **Livermore High School** – 600 Maple Street, Livermore, CA.
- 1.3. The Agreement may require Consultant to perform Services at multiple Sites. The Consultant’s Services at any one of the Sites or combination thereof may be changed, including terminated, in the same manner as the Project, as indicated herein, without changing in any way the remaining Consultant’s Services at other Site(s). The provisions of this Agreement shall apply to the Consultant’s Services at each Site, without regard to the status of the remaining Project component(s). Consultant shall invoice for each inspection and test separately and for each Site separately and District shall compensate Consultant for each Site separately on a

proportionate basis based on the level and scope of Services completed for each Site.

2. **Term.** Unless terminated or otherwise cancelled as permitted herein, the term of this Agreement shall be for the following ("**Term**"):

From **June 15, 2022**, to **August 5, 2022** for Field and Underground Surveys at: Marilyn Avenue Elementary School, Rancho Las Positas Elementary School, Granada High School, and Livermore High School

AND

From **June 2023** to **August 2023** for Updated Field and Underground Survey at Livermore High School

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

<u>  X  </u>	Signed Agreement
<u>  X  </u>	Workers' Compensation Certification
<u>  X  </u>	Fingerprinting/Criminal Background Investigation Certification
<u>  X  </u>	Insurance Certificates and Endorsements
<u>  X  </u>	W-9 Form

4. **Compensation.** Consultant's fee for the performance of Consultant's Services shall be on an hourly basis and/or a per unit basis, as indicated in **Exhibit B** (Prices for Services). District agrees to pay the Consultant for Services satisfactorily rendered pursuant to this Agreement on a per Project basis, for a total fee not to exceed **Five Hundred Nine Thousand Eight Hundred Eighty-One Dollars and Sixty Cents (\$509,881.60)** ("**Total Fee**"). District shall not be obligated to pay or be liable in law or in equity for any amount incurred by Consultant above the Total Fee. District shall pay Consultant according to the following terms and conditions:

- 4.1. The Consultant shall submit a monthly itemized statement of Service charges and expenses to the District on the fifth (5<sup>th</sup>) day of each month. If Consultant performs Services for more than one Site, Consultant shall prepare a separate, itemized statement for each Site. The itemized statement shall reflect the hours spent by the Consultant in performing its Services on each task, and, if applicable, the statements shall reflect expenses and materials. The invoices shall contain a sufficiently detailed description of any task performed by Consultant. The itemized statement shall show the days and hours worked each workday Consultant performs Services for the previous month. District will permit a one (1) month grace period beyond this time for the Consultant to submit its invoice for a particular month's work. No amounts shall be due or owing to the Consultant if it fails to submit an invoice to the District at or before the end of that grace period.
- 4.2. Consultant must provide, to the District's satisfaction, appropriate substantiation for all Services performed on an hourly basis. Consultant shall properly support payment of all hourly services, as further described herein, for each invoice or application for payment submitted by Consultant for its Services. Failure to satisfy this requirement may result in Consultant's invoice or application for payment being rejected, at the District's discretion, until District approves Consultant's full compliance herewith.
- 4.3. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Consultant submits an itemized statement to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.
- 4.4. **Extra Services.** District-authorized services outside of the scope of this Agreement or District-authorized

reimbursables not included in the Consultant's Total Fee are "Extra Services." If the Consultant determines that Extra Services are necessary, then the Consultant may request from the District in writing the District's authorization to perform Extra Services. Any charges for Extra Services shall be paid by the District only upon certification that the claimed Extra Services were authorized, in writing, by the District and that the Extra Services have been satisfactorily completed. If any Services or Work are performed by the Consultant without prior written authorization by the District, the District will not be obligated to pay. Extra Services shall be requested, substantiated and paid as described in **Exhibit B**.

5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing the Services, except as set forth below:

Not applicable

6. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as set forth below:

Not applicable

7. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not 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. Consultant 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 Consultant's employees. In the performance of the Work herein contemplated, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of Consultant's Work, District being interested only in the results obtained.

8. **Consultant and Subconsultant Registration and Compliance.**

- 8.1. Consultant acknowledges that, for purposes of Labor Code section 1725.5, all or some of the Work is a public work to which Labor Code section 1771 applies and that the Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Consultant shall comply with Labor Code section 1725.5, including without limitation the registration requirements for itself and its subconsultants. Consultant represents that all of its subconsultants are registered pursuant to Labor Code section 1725.5.

- 8.2. To the extent applicable, Consultant shall pay workers not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed within the boundaries of the District, pursuant to sections 1770 et seq. of the California Labor Code. Prevailing wage rates are available from the District or on the Internet at: <<http://www.dir.ca.gov>>.

- 8.3. Labor Code section 1771.1(a) states the following:

"A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

- 8.4. Consultant shall comply with the registration and compliance monitoring provisions of Labor Code section

1771.4, including furnishing its CPRs to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations.

8.5. Consultant shall post job site notices, as required by law, including without limitation Labor Code section 1771.4.

8.6. Consultant shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

9. **Designated Representatives.** Consultant shall coordinate with District personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work related to the Project.

10. **Performance of Services.**

10.1. **Standard of Care.**

10.1.1. Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts. Consultant's Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.

10.1.2. Consultant hereby represents that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of the Agreement.

10.1.3. Consultant shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Consultant understands that the District relies upon the professional quality, accuracy, completeness, and coordination by Consultant in performing the Services.

10.1.4. Consultant shall ensure that any individual performing work under the Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the work assigned to them.

10.2. **Meetings.** In addition to all public hearings and meetings, Consultant agrees to participate in coordination meetings to discuss District strategies, timetables, implementations of Services, and any other issues deemed relevant to the Project.

10.3. **District Approval.**

10.3.1. The District has the right to inspect and supervise to secure satisfactory completion of the Services.

10.3.2. Prior to any documents being made public, Consultant shall provide in draft form to District staff and District legal counsel, all documents that it or its subconsultants prepare.

10.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.

11. **Information.**

- 11.1. **Furnished by District.** Upon request by Consultant, District shall furnish Consultant any information and documents readily available to District that the Consultant determines may be of use to the Consultant in the performance of the Services. District shall rely upon Consultant to determine which information and documents may be of use to the Consultant in performance of the Services. District makes no representations with respect to the reliability, accuracy, or completeness of any information or documents furnished by the District. Consultant shall determine if it is appropriate to rely on the District furnished information or documents. Consultant shall determine if clarification, additional information, or additional data is needed, and, if so, seek it out from any available source.
  - 11.2. **Furnished by Others.** Consultant is to obtain, utilizing its own personnel, any required information that has been developed by other public or private entities that are not under contract to District. Consultant shall determine if it is appropriate to rely on the information or data developed by these other public or private entities. Consultant shall determine if clarification, additional information, or additional data is needed, and, if so, seek it out from any available source.
12. **Originality of Services.** Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for the Services.
13. **Copyright/Trademark/Patent.** Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
14. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant 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 Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents. For a period of three (3) years after final payment under this Agreement, all expenditures of public funds in excess of ten thousand dollars (\$10,000) shall be subject to examination and audit by the State Auditor. The audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering the Agreement.
15. **Termination.**
  - 15.1. **Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for the Services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of Services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three (3) days after the day the notice was mailed, whichever is sooner.
  - 15.2. **Without Cause by Consultant.** Consultant cannot terminate this Agreement without cause.
  - 15.3. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
    - 15.3.1. Material violation of this Agreement by the Consultant; or

- 15.3.2. Any act by Consultant exposing the District to liability to others for personal injury or property damage; or
- 15.3.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

Written notice by District shall contain the reasons for the intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the Services from another Consultant. If the expense, fees, and/or costs to the District exceeds the cost of providing the Services pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

- 15.4. **With Cause by Consultant.** Consultant may only terminate this Agreement after giving written notice of intention to terminate for cause and the expiration of the time to cure. Cause shall only include:

- 15.4.1. Material violation of this Agreement by the District, or
- 15.4.2. Failure of the District to timely pay undisputed Consultant invoices.

Written notice by Consultant shall contain the reasons for the intention to terminate and unless within thirty (30) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the thirty (30) calendar days cease and terminate. During the thirty (30) calendar days the Inspector shall continue providing Services to the District until the Agreement ceases and terminates. In the event of this termination, the District may secure the Services from another Consultant.

- 15.5. **Documentation upon Termination.** Upon termination, Consultant shall provide the District with all documents produced maintained or collected by Consultant pursuant to this Agreement, whether or not these documents are final or draft documents.

- 16. **Indemnification.** To the furthest extent permitted by California law, Consultant shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim"), arising out of, pertaining to or relating to, in whole or in part, the negligence, recklessness, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, and/or this Agreement, including without limitation the payment of all consequential damages. The Parties agree that this "Indemnification" provision shall survive the early termination or expiration of this Agreement.

## 17. Insurance.

- 17.1. The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

- 17.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Consultant, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

- 17.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services 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 performing any portion of the Services.
- 17.1.3. **Professional Liability (Errors and Omissions).** This insurance shall cover the Consultant and his/her Consultant(s) for two million dollars (\$2,000,000) aggregate limit subject to no more than twenty-five thousand dollars (\$25,000) per claim deductible, coverage to continue through completion of construction plus two years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.

Type of Coverage	Minimum Requirement
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	\$ 1,000,000 \$ 2,000,000
<b>Automobile Liability Insurance – Combined single limit</b> Each Occurrence	\$ 1,000,000
<b>Professional Liability</b>	\$ 2,000,000
<b>Workers Compensation</b>	Statutory Limits
<b>Employer's Liability</b>	\$ 1,000,000

- 17.2. **Proof of Carriage of Insurance.** The Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:
- 17.2.1. 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."
- 17.2.2. 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.
- 17.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers ("Additional Insureds") are named Additional Insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District.
- 17.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.
- 17.3. **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 the District.

18. **Assignment.** The obligations and liabilities of the Consultant pursuant to this Agreement shall not be assigned voluntarily by the Consultant nor assigned by operation of law, without express written consent of the District.
19. **Binding Contract.** This Agreement shall be binding upon the Parties hereto and upon their successors and assigns and shall inure to the benefit of the Parties and their successors and assigns.
20. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Consultant observes that any of the Work required by this Agreement is at variance with any of these laws, ordinances, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.
21. **Certificates/Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force the certificates, permits and licenses as are required by law in connection with the furnishing of the Services. Except for any license or permits furnished by District, Consultant shall be fully responsible for identifying and obtaining all necessary licenses and permits for the timely prosecution of the Services.
22. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Consultant 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 District policy. Consultant and each subconsultant shall comply with Chapter 1 of Division 2, Part 7 of the Labor Code, beginning with § 1720, and including §§ 1735, 1777.5 and 1777.6, forbidding discrimination, and §§ 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Consultant or subconsultants. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).
23. **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 three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Consultant must submit, upon request by District, appropriate documentation to the District identifying the steps the Consultant has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
24. **Interaction with the Media and Public.** Consultant shall promptly refer all inquiries from the news media or public to District and shall not make any statements to the media or the public relating to the Services. If Consultant receives a complaint from a citizen or the community, Consultant shall promptly inform the District about the complaint.
25. **Taxes.** Consultant shall be liable and solely responsible for paying all required taxes and other obligations, including but not limited to federal and state income taxes and social security taxes payable in connection with the Services and this Agreement. Consultant agrees to release, indemnify, defend, and hold District harmless from and against any worker's compensation or any tax liability which District may incur to any Federal or State governments with jurisdiction as a consequence of this Agreement. All payments made to Consultant may be reported to the Internal Revenue Service.
26. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
27. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include,



without limitation:

27.1. Requesting that District employee(s) evaluate the Consultant and the Consultant’s employees and subcontractors and each of their performance.

27.2. Announced and unannounced observance of Consultant, Consultant’s employee(s), and/or subcontractor(s).

28. **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.

29. **Disputes.** In the event of a dispute between the Parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Consultant shall neither rescind the Agreement nor stop performing the Services.

30. **Confidentiality.** The Consultant and all Consultant’s agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

31. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant 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.

32. **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 sent by overnight delivery service, addressed as follows:

<b>District:</b> Livermore Valley Joint Unified School District 685 East Jack London Boulevard Livermore, CA 94551 Attn: Kim McNeely, Bond Program Director	<b>Consultant:</b> BKF Engineers 4670 Willow Rd., Ste. 250 Pleasanton, CA 94533 Attn: Walter Stemberga, Vice President
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Any notice personally given 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.

33. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

34. **California Law.** This Agreement is entered into in California and shall be governed by and the rights, duties and obligations of the Parties, and 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. Consultant waives any claim or right to remove an action on this Agreement to federal court.

35. **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 the term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

36. **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.
37. **Authority to Bind Parties.** Neither Party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
38. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
39. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted the provision, and this Agreement shall be construed as if jointly prepared by the Parties.
40. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
41. **Signature Authority.** Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.
42. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
43. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.
44. **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 herein and this Agreement shall be read and enforced as though it were included herein.
45. **Incorporation of RFQ/RFP & Proposal and Interpretation of Documents.** The District's Request for Statement of Qualifications and/or A Request for Proposals ("**RFQ/RFP**"), is hereby incorporated into this Agreement. If a conflict exists between this Agreement and the RFQ/RFP and/or the Consultant's Response, this Agreement shall control over the RFQ/RFP, which shall control over Consultant's Response.
46. **Other Provisions.**
  - 46.1. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing of any portion of the Services for the Project.
  - 46.2. **Infectious Disease.** Consultant has read and agrees to comply with the Infectious Disease Provisions attached hereto as and set forth in **Exhibit C**.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the date indicated below.

Dated: \_\_\_\_\_, 20\_\_

Dated: \_\_\_\_\_, 20\_\_

**Livermore Valley Joint Unified School District**

**BKF Engineers**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

**Information regarding Consultant:**

Consultant: \_\_\_\_\_

\_\_\_\_\_  
Employer Identification and/or Social Security Number

License No.: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

**NOTE: Title 26, United States Code sections 6041 and IRS reporting rules require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. These rules also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these rules, the District requires your federal tax identification number or Social Security number, whichever is applicable.**

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Type of Business Entity:  
\_\_\_ Individual  
\_\_\_ Sole Proprietorship  
\_\_\_ Partnership  
\_\_\_ Limited Partnership  
\_\_\_ Corporation, State: \_\_\_\_\_  
\_\_\_ Limited Liability Company  
\_\_\_ Other: \_\_\_\_\_

**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 these provisions before commencing the performance of the Work of this Agreement.

Date: \_\_\_\_\_

Name of Consultant or Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name and 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 Work under this Agreement.)

**FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION**

In addition, to the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 that apply to any entity that has a contract with the District, this form must be attached to the Agreement for Energy Audit Services and one of the boxes **must** be checked ("**Agreement**"):

Consultant certifies that Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 and that the California Department of Justice has determined that neither Consultant nor any of Consultant's employees, subcontractors, agents, and subcontractors' employees or agents (collectively "**Employees**") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent Consultants of the Consultant, who may interact with District pupils outside the immediate supervision and control of the pupil's parent or guardian or a District employee in the course of providing services pursuant to this Agreement, have been convicted of a felony, as that term is defined in Education Code section 45122.1. Consultant shall immediately provide the District any subsequent arrest and conviction information it receives from the California Department of Justice for those Employees during the course of providing services pursuant to this Agreement. A complete and accurate list of all Employees who may interact with District pupils during the course and scope of this Agreement is attached hereto.

**[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]** Neither Consultant nor Consultant's Employees will have any interaction with District pupils outside the immediate supervision and control of the pupil's parent or guardian or a District employee so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 do not apply to Consultant for the services provided 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.

**District Representative's Name & Initials:** \_\_\_\_\_ **INITIAL HERE:** \_\_\_\_\_

**[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]** Consultant's services pursuant to this Agreement are provided in an emergency or exceptional situation, such as when pupil health or safety is endangered, and the District will take appropriate steps to protect the safety of any pupil that may interact with Consultant and/or Consultant's Employees so that Consultant and/or Consultant's Employees do not interact with District pupils outside the immediate supervision and control of the pupil's parent or guardian or a District employee in the course of providing services pursuant to this Agreement. (Ed. Code, § 45125.1 (c).) 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.

**District Representative's Name & Initials:** \_\_\_\_\_ **INITIAL HERE:** \_\_\_\_\_

**[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]** Consultant is a sole proprietor and in compliance with Education Code section 45125.1 (h)(1)-(2), the District confirmed with the California Department of Justice that Consultant has not been convicted of a felony, as that term is defined in Education Code section 45122.1, pursuant to the requirements of Education Code section 45125.1 (a). 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.

**District Representative's Name & Initials:** \_\_\_\_\_ **INITIAL HERE:** \_\_\_\_\_

**Megan's Law (Sex Offenders)**. I have verified and will continue to verify that the employees of Consultant that will be on the Site(s) and the employees of the Subcontractor(s) that will be on the Site(s) are **not** listed on California's "Megan's Law" Web Site (<http://www.meganslaw.ca.gov/>).

**[MUST BE COMPLETED BY CONSULTANT'S AUTHORIZED REPRESENTATIVE.]** I am a representative of Consultant entering into this Agreement with District and I am familiar with the facts herein certified and am authorized and qualified to execute this certificate on behalf of Consultant.

Date: \_\_\_\_\_  
Name of Consultant or Company: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Print Name and Title: \_\_\_\_\_

## Exhibit A

### Project Scope

#### SURVEYING – TOPOGRAPHIC

Consultant's entire Proposal is **not** made part of this Agreement.

Consultant shall perform the following surveying-topographical Services as indicated in the District's RFP, and shall include, without limitation:

#### **Aerial Topographic Survey Control**

- A. Set aerial control panels at locations by aerial mapping company, if any. Perform field survey and office calculations to determine horizontal and vertical locations of aerial control panels. Survey to be tied into appropriate benchmarks.
- B. Provide electronic/digital file with color images, coordinates and elevations of aerial maps and control points.

#### **Complete Comprehensive Base Mapping (utilities, easements, boundary, and topography)**

- A. Perform research at City Engineering Department to obtain record drawings for existing public (and private) improvements including existing city-owned utilities on or within the influence of the proposed project.
- B. Obtain record facility maps from franchise utilities (PG&E gas and electric, SBC, Cable TV)
- C. Use additional field survey shots and prepare existing base utilities information as well as augmentation to the base mapping for other key features.
- D. Use information contained in the preliminary title report, identify record easement information and other potential constraints to the development of the property on the base map graphically.
- E. Circulate the base mapping for use and comment by District, Master Architect, and others as needed.
- F. Elevation shall be based upon the existing City or County benchmarks.
- G. Identify fencing on site including location, type, description, and gates (pedestrian and vehicle).
- H. Accessible parking areas, driveways, and path of travel to be included.
- I. Clearly delineate contours and intervals at one (1) foot increment in non-pervious areas, showing grade break lines, flow lines, ridge lines, ditches.
- J. Point elevation grid interval shall be approximately 20 feet.
- K. Spot elevations at slope changes.
- L. Playground equipment and other site features to be included to determine ADA compliance.
- M. Spot elevations at front entry to be included to determine ADA compliance.
- N. Map and identify portable units including ramps, walkways, and stairs.
- O. Building corner spot elevations and locations (all existing structures: provide number of floors).
- P. Building finish floor spot elevations, building elevations for each story of the building (if applicable).
- Q. Location of ramps with slopes, cross slopes, landings and spot elevations
- R. Curbs, gutters, drain inlets, manholes, and utility boxes to be identified on the map with elevations and/or spot elevations.
- S. Surface identification – exposed soil, turf, AC pavement, concrete pavement, etc.
- T. Site walls, retaining walls, seat walls with elevations to be shown.
- U. Hard and soft-scape features such as seats and planters.
- V. Show individual trees with diameters larger than 2 inches. Indicate perimeter of dripline. Ground elevation at tree trunk.

#### **Prepare a Record of Survey**

- A. Prepare and file with County Surveyor a record of survey map of the property boundary. Record of survey will be signed and sealed by a California professional land surveyor or professional engineer authorized to practice land surveying in California.
- B. Set property corner monuments as required by County Surveyor. Monuments will be identified (tagged) with PLS or RCE License number.

#### **Underground Utility Survey**

- A. Indicate the size and invert elevations of all sub-surface piping and conduits including abandoned lines. Map shall include both accessible underground utilities and from the existing records
- B. Identify locations of all utilities by type – power, gas sanitary sewer, storm drain, phone, domestic water, irrigation, telecommunication etc.
- C. Surface and underground utility manholes, vaults, transformers, switchgear, cleanouts, etc.
- D. Utility box locations
- E. Fire hydrant locations.

#### **Additional Services**

- A. Field topographic shots for verifying and/or augmenting aerial topographic survey will be taken as a part of the comprehensive base mapping work. These shots will including tying in existing utilities on the property as well as general shots to validate the terrain model developed by the aerial mapping subconsultant.
- B. Set two inter-visible project survey control monuments (one of which shall be the project benchmark) near edge of the property for use as Project control throughout the project planning, design development and subsequent construction. Monuments will be durable in nature with identifiable markers such as brass discs, aluminum washers or other like tag(s).
- C. Combine multiple parcels at Livermore High School into single parcel.
- D. Attend meetings and assist in survey related issues as needed.

**Submittal Procedures – Use of Software.** Consultant shall use the District provided Construction Management Software Application (Orion) to communicate and transmit all the Project related documents such as: RFIs, Cost Proposals, Daily Inspection Reports, Drawings, Change Orders and other District/Construction related documents.

**Exhibit B**

**Prices for Services**

1. **Total Fees.**

<b>Topographic Survey and Underground Utility Services</b>	<b>Price</b>
Marylin Elementary School	\$ 87,128.00
Rancho Las Positas Elementary School	\$ 87,128.00
Granada High School	\$ 130,542.00
Livermore High School	\$ 132,958.00
Alternate: Livermore High School Parcel Merge	\$ 28,350.00
Owner Allowance for Unforeseen Conditions	\$ 43,775.60
<b>TOTAL</b>	<b>\$ 509,881.60</b>



2. **Hourly Rates.** The following rates, which include overhead, administrative cost and profit, shall be utilized in arriving at the fee for Services and Extra Services on a per hour basis and shall not be changed for the term of the Agreement.

Job Title	Hourly Rate
Principal/Vice President	\$272.00
Sr. Associate/Vice President	\$244.00
Associate	\$237.00
Sr. Project Mgr/ Sr. Tech Mgr	\$237.00
Project Mgr/Tech Mgr	\$231.00
Engineering Mgr/Surveying Mgr/Planning Mgr	\$213.00
Sr. Project Engineer/Sr. Project Surveyor/Sr. Project Planner	\$198.00
Project Engineer/Project Surveyor/Project Planner	\$174.00
Design Engineer/Staff Surveyor/Staff Planner	\$151.00
BIM Specialist I, II, III	\$151.00 - \$174.00 - \$198.00
Technician I, II, III and IV	\$144.00 - \$153.00 - \$168.00 - \$181.00
Drafter I, II, III, IV	\$113.00 - \$124.00 - \$134.00 - \$149.00
Engineering Asst./Surveying Asst./Planning Asst.	\$94.00
Survey Party Chief	\$198.00
Instrument Person	\$170.00
Survey Chainperson	\$127.00
Utility Locator I, II, III, IV	\$103.00 - \$146.00 - \$175.00 - \$199.00
Apprentice I, II, III, IV	\$78.00 - \$105.00 - \$116.00 - \$123.00
Senior Consultant	\$259.00
Senior Construction Admin.	\$225.00
Resident Engineer	\$167.00
Field Engineer I, II, III	\$151.00 - \$174.00 - \$198.00
Project Coordinator	\$126.00
Senior Project Assistant	\$109.00
Project Assistant	\$96.00
Clerical/Admin. Asst.	\$81.00

3. **Billing for Extra Services.** Consultant shall bill the District for Extra Services as follows:
- 3.1. Extra Services shall be billed for on an hourly basis and per-item basis.
  - 3.2. The District shall pay Consultant only for all undisputed amounts within thirty (30) days after Consultant submits an invoice to the District for Extra Services actually completed and after the District's written approval of the Extra Services, or the portion of the Extra Services for which payment is to be made.
  - 3.3. Consultant must provide, to the District's satisfaction, appropriate substantiation for all Extra Services performed on an hourly basis. Consultant shall properly support payment of all hourly services in each invoices, as specifically provided for in the "Compensation" section of this Agreement.

## Exhibit C

### Infectious Disease Provisions

1. **Compliance with Orders.** Consultant and its subcontractors, agents and employees thereof, are responsible for complying with all applicable and existing federal, State, and/or local statutes, orders, rules, regulations, ordinances, and/or directives in any way relating to site safety, the Work, and the District site(s), in connection with any infectious and communicable disease in any form, whether bacterial or viral, including, without limitation, MSRA, influenza, COVID-19, and/or any similar virus or derivative strain (“**Infectious Disease**”). Consultant shall ensure its employees on District sites are trained and knowledgeable of all these requirements to ensure full compliance on any District site(s) and during the Work. Consultant’s obligations hereunder shall include, without limitation providing personal protective equipment (“**PPE**”) to its employees and to ensure that its subcontractors provide PPE equipment to its employees to prevent the spread of an Infectious Disease at District site(s).
2. **Infectious Disease & Extra Work.**
  - 2.1. Consultant agrees that the Total Fee is based on Consultant’s full compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to site safety, the Work, and District site(s) in relation with an Infectious Disease at the time the Parties entered into the Agreement. Therefore, any additional costs to Consultant associated with an Infectious Disease, or any federal, state, or local order relating thereto, shall not be considered compensable unless:
    - 2.1.1. It occurred after the date the Parties entered into this Agreement;
    - 2.1.2. It materially increases the Total Fee by imposing different, additional or more stringent requirements; and
    - 2.1.3. Consultant notifies District within ten (10) days of notice of any new public health order(s), including the anticipated increase to the Total Fee due to the new public health order(s), and Consultant substantiates those costs with detailed supporting documentation.
  - 2.2. If, during the Work, the applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to site safety, the Work, and/or District site(s) in connection with an Infectious Disease, are changed or rescinded (e.g., by the reduction of potential exposure or risk due to vaccinations), the parties agree to reduce the Total Fee due to the removal of the required efforts. If the Parties cannot mutually agree on the appropriate reduction, District may issue a notice of equitable adjust for an amount of time and money it determines to be both reasonable and appropriate.
3. **Infectious Disease Release.** Consultant acknowledges that it is voluntarily and freely entering into the Agreement for the Work and deciding to perform the Work which will require Consultant to enter upon and into District site(s) and that Consultant use of District site(s) includes the possible exposure to and illness from an Infectious Disease. Consultant further acknowledges the dangers involved and with full knowledge of these dangers, voluntarily agrees to assume all risks of bodily injury, death, or property damage, whether those risks are known or unknown. Consultant hereby and hereby agrees to fully indemnify, hold harmless, defend and release the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers from any and all District, its agents, representatives, officers, consultants, employees, trustees, and volunteers from any and all liabilities, causes of action, lawsuits, claims, demands, or damages of any kind whatsoever that Consultant, its staff, participants, relatives, children, spouse, partner, household members, family members, employees, guests, invitees, volunteers, agents, consultants, subcontractors, and any other person tracing exposure or illness to Consultant, now have, or may have in the future, for injury, trauma, illness, loss, unwanted contact, harassment, disability, death or property damages related to being exposed to or contracting an Infectious Disease while using any District site(s) for the performance of the Work. Consultant shall include this paragraph in all subcontracts with subcontractors/subconsultants.
4. Consultant shall ensure it has employees onsite that are trained and knowledgeable of these requirements to ensure full compliance on District site(s).

5. Any cost to comply with these “Infectious Disease Compliance Provisions” shall be at Consultant’s sole expense and expense but may be included in the Fee.

6. **COVID-19 Vaccination or Testing with respect to all Applicable Workers who may have contact with District students (“Applicable Worker(s) with Potential Student Contact”).**

6.1. **Health Order Acknowledgement.** Consultant certifies that it has reviewed California Department of Public Health’s State Public Health Officer Order of August 11, 2021 (“**Health Order**”), regarding vaccination status among eligible K-12 workers and the establishment of diagnostic screening testing of unvaccinated workers to minimize the risk of transmission of COVID-19 on school sites (“**School Site(s)**”). This is a link to the Order: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Vaccine-Verification-for-Workers-in-Schools.aspx>

6.2. **Requirements to Comply with Health Order.** Before any Applicable Worker with Potential Student Contact performs any Work at a District School Site, Consultant shall ensure that:

6.2.1. **Vaccination.** An Applicable Worker with Potential Student Contact is fully vaccinated for COVID-19, which shall mean that at least fourteen (14) days have elapsed from the final vaccination required for the particular type of COVID-19 vaccine administered to the Applicable Worker with Potential Student Contact, including any booster, to the extent approved by Health & Safety Policies (“**Fully Vaccinated**”); or

6.2.2. **Testing.**

6.2.2.1. For any Applicable Worker with Potential Student Contact that is **not** Fully Vaccinated, Consultant has verified that the Applicable Worker with Potential Student Contact: (i) has tested negative for COVID-19 at least seventy-two (72) hours prior to entering a School Site; (ii) tests for COVID-19 on a weekly basis thereafter; (iii) any subsequent test is negative for COVID-19.

6.2.2.2. Testing shall be compliant with the Health Order and must either be a:

6.2.2.2.1. Polymerase Chain Reaction (PCR) test; or

6.2.2.2.2. Antigen test.

6.2.2.3. Any of the above tests must either: (i) have Emergency Use Authorization by the U.S. Food and Drug Administration; or (ii) be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services.

6.2.3. **Unknown Vaccination Status.** If Consultant does not know the vaccination status of an Applicable Worker with Potential Student Contact, then Consultant must consider that Applicable Worker with Potential Student Contact to be unvaccinated and comply with the “Testing” provision above.

6.2.4. **Exemption.** Any Applicable Worker with Potential Student Contact that has requested and obtained an accommodation from the Consultant from the “Vaccination” provisions, or is otherwise exempt from obtaining a COVID-19 vaccination, based upon (i) a qualifying medical disability pursuant to the Americans with Disabilities Act (42 U.S.C. § 12101); or (ii) a sincerely held religious belief pursuant to the Civil Rights Act of 1964 (§ 7, 42 U.S.C. § 2000e et seq.), shall still be subject to the “Testing” provision hereunder.

6.2.5. **Record Keeping.** Consultant shall maintain written documentation reflecting verification of the testing/vaccination requirements herein and shall provide any documents to the District upon request. Consultant’s responsibility for COVID-19 compliance and record keeping extends to all Applicable Workers with Potential Student Contact, regardless of whether they are designated as employees or acting as independent contractors of the Consultant.